DOCKET

SUPREME COURT
OF THE UNITED STATES

No. 09-804
Vide 09-784
Title: CIGNA Corporation, et al., Petitioners
v
Janice C. Amara, et al., Individually and on Behalf of All Others Similarly Situated
Docketed: January 6, 2010
Lower Ct.: United States Court of Appeals for the Second Circuit
Case Nos.: (08-3388, 08-3460)
Decision Date: October 6, 2009
Questions Presented

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~
Jan 4 2010	Petition for a writ of certiorari filed. (Response due February 5, 2010)
Feb 5 2010	Brief of respondents Janice C. Amara, et al., Individually and on Behalf of All Others Similarly Situated in opposition filed.
Feb 16 2010	Reply of petitioners CIGNA Corporation, et al. filed. (Distributed)
Feb 17 2010	DISTRIBUTED for Conference of March 5, 2010.
Mar 8 2010	The Solicitor General is invited to file a brief in this case expressing the views of the United States. Justice Sotomayor took no part in the consideration or decision of this petition.
May 27 2010	Brief amicus curiae of United States filed. VIDED.
Jun 7 2010	Supplemental brief of respondents Janice C. Amara, et al., Individually and on Behalf of All Others Similarly Situated filed. VIDED.
Jun 7 2010	Supplemental brief of petitioners CIGNA Corporation, et al. filed. (Distributed)
Jun 8 2010	DISTRIBUTED for Conference of June 24, 2010.
Jun 28 2010	Petition GRANTED. Justice Sotomayor took no part in the consideration or decision of this petition.
Jul 13 2010	The time within which to file the joint appendix and petitioners' brief on the merits is extended to and including August 27, 2010.
Jul 13 2010	The time within which to file respondents' brief on the merits is extended to and including October 15, 2010.
Aug 27 2010	Brief of petitioners CIGNA Corporation, et al. filed.
Aug 27 2010	Joint appendix filed (3 volumes). (Statement of costs filed)
Sep 7 2010	SET FOR ARGUMENT ON Tuesday, November 30, 2010.
Sep 27 2010	CIRCULATED
Sep 28 2010	Record received from U.S.C.A. for Second Circuit. (3 boxes)
Oct 5 2010	Record received from U.S.D.C. for District of Connecticut. (1 box) There are sealed doucments in this record.
Oct 7 2010	Consent to the filing of amicus curiae briefs in support of either party or neither party received from counsel for the petitioners.
Oct 15 2010	Brief of respondents Janice C. Amara, et al., Individually and on Behalf of All Others Similarly Situated filed. (Distributed)
Oct 19 2010	Consent to the filing of amicus briefs, in support of either party or of neither party, received from counsel for the respondents.
Oct 22 2010	Brief amicus curiae of United States filed. (Distributed)
Oct 22 2010	Brief amicus curiae of AARP filed. (Distributed)
Oct 22 2010	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
Oct 22 2010	Brief amici curiae of National Employment Lawyers Association, et al. filed. (Distributed)
Nov 15 2010	Motion of the Acting Solicitor General for leave to participate in oral argument

as amicus curiae and for divided argument GRANTED. Justice Sotomayor took no part in the consideration or decision of this motion.

Nov 15 2010 Reply of petitioners CIGNA Corporation, et al. filed. (Distributed)

Nov 30 2010 Argued. For petitioners: Theodore B. Olson, Washington, D. C. For respondents: Stephen R. Bruce, Washington, D. C., and Edwin S. Kneedler, Deputy Solicitor General, Department of Justice, Washington, D. C. (for United States, as amicus curiae.)

PETITION FOR WRIT OF CERTIORARI

Supreme Court, U.S.
FILED

09-804 JAN 4 - 2010

OFFICE OF THE CLERK

No.

IN THE
Supreme Court of the United States

CIGNA CORPORATION AND CIGNA PENSION PLAN,
Petitioners,

v.

JANICE C. AMARA ET AL., individually and on behalf of all others similarly situated,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a showing of "likely harm" is sufficient to entitle participants in or beneficiaries of an ERISA plan to recover benefits based on an alleged inconsistency between the explanation of benefits in the Summary Plan Description or similar disclosure and the terms of the plan itself.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

In addition to the parties named in the caption, Gisela R. Broderick and Annette S. Glanz were plaintiffs below and are respondents in this Court.

Pursuant to this Court's Rule 29.6, undersigned counsel state that CIGNA Corporation has no parent corporation and that no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT 1

REASONS FOR GRANTING THE PETITION 10

I. THE CIRCUITS HAVE SPLIT THREE WAYS REGARDING THE SHOWING THAT A PLAN PARTICIPANT MUST MAKE TO RECOVER BASED ON A DEFICIENT SPD 12

A. Six Circuits Require A Plan Participant To Show Reliance Or Prejudice 12

B. Three Circuits Do Not Require Any Showing Of Reliance Or Prejudice 16

C. The Second Circuit's "Likely Harm" Standard Is Inconsistent With The Approach Of Every Other Circuit That Has Addressed The Issue 17

II. THE QUESTION PRESENTED IS EXCEPTIONALLY IMPORTANT TO BOTH PLAN SPONSORS AND PLAN PARTICIPANTS 20

III. IF THE COURT DOES NOT GRANT PLENARY REVIEW, IT SHOULD HOLD THE PETITION AND THEN GVR THE CASE IN LIGHT OF *CONKRIGHT V. FROMMERT* 24

CONCLUSION 26

APPENDIX A: Opinion of the United States Court of Appeals for the Second Circuit 1a

APPENDIX B: Opinion of the United States District Court for the District of Connecticut (Feb. 15, 2008) 5a

APPENDIX C: Opinion of the United States District Court for the District of Connecticut (June 13, 2008) 160a

APPENDIX D: Statutory Provisions Involved 222a

TABLE OF AUTHORITIES

Page(s)

CASES

Aetna Health Inc. v. Davila,
542 U.S. 200 (2004) 2

Aiken v. Policy Mgmt. Sys. Corp.,
3 F.3d 138 (4th Cir. 1993) 13

Bachelder v. Commc'ns Satellite Corp.,
837 F.2d 519 (1st Cir. 1988) 13

Branch v. G. Bernd Co.,
955 F.2d 1574 (11th Cir. 1992) 15

Burke v. Kodak Ret. Income Plan,
336 F.3d 103 (2d Cir. 2003), *cert. denied*, 540 U.S. 1105 (2004) 7, 8, 9, 10, 18

Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. & Research Found.,
334 F.3d 365 (3d Cir. 2003) 16

Chiles v. Ceridian Corp.,
95 F.3d 1505 (10th Cir. 1996) 11, 14, 19, 22

Curtiss-Wright Corp. v. Schoonejongen,
514 U.S. 73 (1995) 11, 23

Edwards v. State Farm Mut. Auto. Ins. Co., 851 F.2d 134 (6th Cir. 1988) 17

Fenton v. John Hancock Mut. Life Ins. Co., 400 F.3d 83 (1st Cir. 2005) 13

Flacche v. Sun Life Assurance Co. of Can. (U.S.), 958 F.2d 730 (6th Cir. 1992) 17

Frommert v. Conkright,
535 F.3d 111 (2d Cir. 2008), *cert. granted*, 129 S. Ct. 2860 (2009) 25

Govoni v. Bricklayers, Masons & Plasterers Int'l Union of Am., Local No. 5 Pension Fund, 732 F.2d 250 (1st Cir. 1984) 10, 12, 13

Greeley v. Fairview Health Servs.,
479 F.3d 612 (8th Cir. 2007) 13, 14

Harris v. Blue Cross Blue Shield,
995 F.2d 877 (8th Cir. 1993) 14

Health Cost Controls of Ill. v. Washington,
187 F.3d 703 (7th Cir. 1999) 15

Heffner v. Blue Cross & Blue Shield of Ala., Inc., 443 F.3d 1330
(11th Cir. 2006) 15

Hightshue v. AIG Life Ins. Co.,
135 F.3d 1144 (7th Cir. 1998) 14, 15

Lockheed Corp. v. Spink,
517 U.S. 882 (1996) 3

Mass. Mut. Life Ins. Co. v. Russell,
73 U.S. 134 (1985) 3

Mertens v. Hewitt Assocs.,
508 U.S. 248 (1993) 3

N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.,
514 U.S. 645 (1995) 3

Pilot Life Ins. Co. v. Dedeaux,
481 U.S. 41 (1987) 2, 3

Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon, 541 U.S. 1 (2004) 11

Rush Prudential HMO, Inc. v. Moran, 536 U.S. 355 (2002) 3, 20

Stilner v. Beretta U.S.A. Corp., 74 F.3d 1473 (4th Cir. 1996) (en banc) 13

United States v. Hays, 515 U.S. 737 (1995) 24

Washington v. Murphy Oil USA, Inc., 497 F.3d 453 (5th Cir. 2007) 10, 11, 17

STATUTES

28 U.S.C. § 1254(1) 1

29 U.S.C. § 1001 *et seq.* 1

29 U.S.C. § 1022(a) 4

29 U.S.C. § 1024(b) 4

29 U.S.C. § 1102(b)(3) 23

29 U.S.C. § 1132 6

29 U.S.C. § 1132(a)(1)(B) 3

29 U.S.C. § 1132(e)(2) 21

29 U.S.C. § 1144(a) 3

PETITION FOR A WRIT OF CERTIORARI

Petitioners CIGNA Corporation and CIGNA Pension Plan (collectively, "CIGNA") respectfully submit this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the court of appeals is unpublished but is electronically reported at 2009 WL 3199061. Pet. App. 1a. The opinions of the district court are published at 559 F. Supp. 2d 192 (Pet. App. 160a) and 534 F. Supp. 2d 288 (Pet. App. 5a).

JURISDICTION

The court of appeals filed its opinion on October 6, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, are set forth in the appendix to this petition.

STATEMENT

This case provides the Court with the opportunity to resolve a deep and acknowledged circuit split on an issue of profound importance to the millions of employers and employees who sponsor and participate in benefit plans governed by ERISA. The circuits are hopelessly divided regarding the showing that a participant in an ERISA-governed plan must make to recover benefits based on an inconsistency between the Summary Plan Description ("SPD")—a

document providing a concise overview of plan benefits—and the plan itself. In the decision below, the Second Circuit affirmed the district court's application of a "likely harm" standard that permitted each of the 26,000 members of the plaintiff class to recover based on an explanation of benefits in an SPD without a showing that any class member had relied on or was prejudiced by any inconsistency between the SPD and the terms of the plan. The Second Circuit's application of a "likely harm" standard in this case and other cases directly conflicts with decisions from the six circuits that require plaintiffs to make an individualized showing of reliance or prejudice to recover based on a deficient SPD, as well as with the decisions from the three other circuits that do not require a plaintiff to make a showing of even "likely harm" to recover.

The widespread disagreement on this question is incompatible with ERISA's objective of "provid[ing] a uniform regulatory regime over employee benefit plans." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004). Nor is it possible to reconcile the Second Circuit's "likely harm" standard—which effectively holds employers strictly liable for SPD deficiencies—with the "careful balanc[e]" that ERISA strikes between the protection of plan participants and the promotion of plan formation. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987). This Court should grant review to establish national uniformity on this important issue of ERISA law and to reject the approach of those circuits that permit plan participants to secure windfall recoveries based on SPDs they may not have even read—let alone, relied upon.

1. ERISA does not "require[ ] employers to establish employee benefits plans" or "mandate what kind of benefits employers must provide if they choose to

have such a plan." *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). It instead "encourag[es] the formation" of such plans by establishing a uniform legal framework that facilitates cost-effective plan administration (*Pilot Life*, 481 U.S. at 54) and that "minimize[s] the administrative and financial burden of complying with conflicting [state-law] directives." *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656 (1995) (internal quotation marks omitted).

The protections that ERISA affords plan participants reflect the "careful balanc[e]" that Congress struck between the dual statutory objectives of protecting plan participants and promoting plan formation (*Pilot Life*, 481 U.S. at 54) as well as the overriding importance of national "uniform[ity]" to ERISA's regulatory framework. *See Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 379 (2002). Thus, ERISA contains a "carefully crafted and detailed enforcement scheme" (*Mertens v. Hewitt Assocs.*, 508 U.S. 248, 254 (1993)) that authorizes a plan participant to bring a civil action "to recover benefits due to him under the terms of the plan" (29 U.S.C. § 1132(a)(1)(B)), but that does not authorize awards of extra-contractual damages. *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 144 (1985). ERISA also restricts plan participants to the remedies afforded by ERISA itself by expressly preempting all state-law claims that "relate to any employee benefit plan." 29 U.S.C. § 1144(a).

ERISA contains several disclosure provisions that are designed to ensure that participants understand their benefits and the eligibility requirements they must satisfy. Because plans are generally voluminous documents written in technical legal terms, ERISA requires plan administrators to provide par-

ticipants with SPDs that summarize the terms of the plan in plain English. 29 U.S.C. §§ 1022(a), 1024(b). SPDs must be "written in a manner calculated to be understood by the average plan participant," and must be "sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." *Id.* § 1022(a). ERISA further requires that a plan provide participants with a Summary of Material Modifications ("SMM") whenever material changes are made to the plan or to the information that the plan is required to disclose in the SPD. *Id.* ERISA's "regulations regarding the content of SMMs and SPDs [are] virtually identical." Pet. App. 115a n.33.

2. CIGNA sponsors an ERISA-governed pension benefit plan for its employees. In 1998, CIGNA transitioned from a traditional defined benefit pension plan, known as "Part A," to a cash balance pension plan, known as "Part B." Pet. App. 16a-17a.

Under CIGNA's defined benefit pension plan, employees earned benefits over time based on their service and salary. Pet. App. 15a. Upon retirement, they received an annuity that provided them with an annual benefit payable for life. *Id.* at 16a. Under CIGNA's cash balance pension plan, employees still earn benefits over time based on service and salary, but—instead of being expressed in the form of an annual benefit—these amounts are "deposited" in a hypothetical "account" for each employee. *Id.* at 19a-20a. The account balances increase based on service and salary credits, as well as interest credits; at retirement, employees have the option of taking their benefit as a lump sum or in the form of an annuity payable for life. *Id.* at 21a-22a.

CIGNA is one of the "hundreds of employers [that] have adopted" cash balance plans since they "were introduced in the mid-1980s." Pet. App. 11a. Like the CIGNA Plan, most of these cash balance plans are the result of lawful "conversions from traditional defined benefit plans." *Id.* at 13a. There are many factors that can lead an employer to transition to a cash balance plan. As the district court explained, "cash balance plans are not inherently more or less costly than traditional defined benefit plans," and, "depending on how the plan is configured, . . . may provide advantages for both employees and employers." *Id.* at 11a.

CIGNA transitioned from a defined benefit plan to a cash balance plan by converting each plan participant's Part A accrued benefit into a lump sum and depositing that amount in each participant's individual Part B account as an opening balance. Pet. App. 19a. Participants thereafter accrue additional benefits based on annual pay credits and quarterly interest credits. *Id.* at 20a-21a. CIGNA also guarantees participants that, if their Part B benefit at the time of retirement is less valuable than their Part A accrued benefit at the time of the transition, they will receive their Part A benefit as a "minimum benefit." *Id.* at 22a.

In December 1997, CIGNA issued an SMM that informed participants about the forthcoming transition to a cash balance plan and that "contained detailed information about the calculation of opening balances." Pet. App. 34a. In October 1998, CIGNA issued the SPD for Part B, which it reissued in nearly identical form in September 1999. *Id.* at 39a. Among other things, the SPD provided participants with information about "eligibility; how breaks in service affect eligibility; how the cash balance ac-

count grows, including how pay and interest credits accrue; when benefits are paid; [and] how benefits are paid. . . . It also informed employees that they could obtain a copy of the Plan from the plan administrator, and the Plan was later made available on CIGNA's intranet site." *Id.* at 39a-40a.

3. In 2001, respondents filed suit against CIGNA in the United States District Court for the District of Connecticut under ERISA § 502, 29 U.S.C. § 1132. On behalf of a putative class of participants in the CIGNA Pension Plan, respondents alleged that Part B of the Plan violated numerous substantive requirements of ERISA and that CIGNA had violated certain of ERISA's disclosure requirements during the transition from its defined benefit pension plan to its cash balance plan. Pet. App. 7a. The district court certified a class of approximately 26,000 plan participants. *Id.* at 41a.

After a bench trial, the district court concluded that the terms of CIGNA's cash balance plan were lawful and rejected respondents' arguments that the Plan is age-discriminatory and violates ERISA's nonforfeiture and anti-backloading rules. Pet. App. 8a. The court emphasized that "ERISA gives employers substantial leeway in designing a pension plan," and that "CIGNA's Plan complies with the relevant statutory provisions." *Id.*

The court also determined, however, that "CIGNA's summary plan descriptions . . . were inadequate under ERISA" because "the company did not provide its employees with the information they needed to understand the conversion from a traditional defined benefit plan to a cash balance plan and its effect on their retirement benefits." Pet. App. 8a.

The district court found that the CIGNA Plan's SPDs were deficient because they failed to disclose to participants a phenomenon known as "wear away." Pet. App. 123a. "Wear away" is attributable to the interaction between the Plan's opening account balance and minimum benefit provisions. *Id.* at 24a. Specifically, although participants earn additional pay and interest credits to their Part B account balances each year they continue working, some participants might have account balances that are less valuable than their Part A minimum benefit for some period of time due to falling interest rates, mortality assumptions, or the protection of early retirement subsidized benefits. *Id.* at 22a-25a.

The district court held that this "wear away" phenomenon was not inconsistent with any of ERISA's substantive requirements. Pet. App. 8a. It nevertheless concluded that "CIGNA had a duty to inform plan participants of the possibility of wear away." *Id.* at 123a. According to the district court, CIGNA violated this duty by failing to disclose "wear away" in its SPDs. *Id.*[1]

The district court rejected CIGNA's argument that, even if its SPD were deficient, respondents were "not entitled to relief because they ha[d] failed to demonstrate injury" attributable to those deficiencies. Pet. App. 131a. Invoking the Second Circuit's decision in *Burke v. Kodak Retirement Income Plan*, 336 F.3d 103 (2d Cir. 2003), *cert. denied*, 540 U.S.

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[1] The district court also found that the SPDs were deficient because they purportedly led plan participants to believe that all their Part A accrued benefits would be preserved in the opening Part B account balance or as part of their minimum benefit, when in fact early retirement benefits were not preserved under some circumstances. Pet. App. 128a-30a.

1105 (2004), the district court stated that recovery is appropriate where "a plan participant or beneficiary was *likely* to have been harmed as a result of a deficient SPD" and that "[w]here a participant makes this initial showing . . . the employer may rebut it through evidence that the deficient SPD was in effect a harmless error." Pet. App. 132a (quoting *Burke*, 336 F.3d at 113) (emphasis in *Burke*). Emphasizing the "broad nature of 'likely harm,'" the court found that respondents had made their threshold showing because CIGNA's SPDs "likely, and quite reasonably, led plan participants to believe that wear away was not a likely result of the transition to Part B." *Id.* at 132a, 136a (internal quotation marks omitted).

To rebut this presumption of "likely harm," CIGNA demonstrated that, "even if [respondents] had received all of the information they claim should have been included in the [SPDs], no Class member's benefits under Part B would have changed" (Pet. App. 133a) because the terms of the Plan do not afford CIGNA's employees the authority to disapprove plan amendments. The district court nevertheless concluded that CIGNA had failed to defeat the "likely harm" presumption because it was possible that the deficiencies in the SPDs "deprived [respondents] of the opportunity to take timely action," including "protesting at the time Part B was implemented, leaving CIGNA for another employer with a more favorable pension plan, or filing a lawsuit like this one." *Id.* at 137a (internal quotation marks omitted).

The district court then ordered briefing on remedial issues. CIGNA argued that, before a remedy could be implemented, it was necessary to determine "whether any individual employee suffered likely prejudice and/or whether the violations constituted

harmless error for that employee." Pet. App. 162a. The district court rejected CIGNA's individualized remedial approach and declined to "distinguish the named Plaintiffs from the rest of the Class," or "require an individualized showing such as that requested by CIGNA, *even from the named Plaintiffs themselves*." *Id.* at 164a (emphasis added). According to the district court, "all class members were affected equally and in a similar manner" by the deficient SPDs. *Id.* at 165a. In so holding, the court rejected CIGNA's argument that, "'[a]t a minimum, a plan participant should be required to prove detrimental reliance before being entitled to benefits based on a flawed SPD'"; that "position," the district court stated, was "contrary to Second Circuit precedent." *Id.* at 165a n.1 (citing *Burke*, 336 F.3d at 112; alteration in original).

Applying its undifferentiated, class-wide remedial approach, the district court concluded that "the terms of Part B ha[d] been . . . modified by CIGNA's October 1998 and September 1999 Summary Plan Descriptions," and ordered CIGNA to recalculate the class's benefits using a so-called "A+B" approach. Pet. App. 218a. Under that methodology, a participant will receive "all of her Part A benefits in the form those benefits were previously offered under Part A, plus all the benefits she accrued under Part B." *Id.* at 196a.[2]

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[2] In crafting this relief, the district court pointed to deficiencies in both the SPDs and the SMM, but made clear that, in the absence of the deficient SPDs, it would not have held that the terms of the Plan had been "modified" to provide for an "A+B" approach. Pet. App. 218a; *see also id.* at 200a ("the Court is reluctant . . . to reform the terms of the plan in conformity with the SMM").

"[R]ecogniz[ing] that the benefits awarded by [its] opinion are substantial, and that the law on which they are based is anything but settled," the district court *sua sponte* stayed its decision pending appeal. Pet. App. 219a. The court observed that "the relevant statutory provisions and existing case law do not provide clear guidance" on the issues before it, and concluded that a stay was warranted because "[t]he stakes are far too high—for both CIGNA and its employees—to implement the Court's judgment in the face of such substantial uncertainty." *Id.* at 161a.

The court of appeals summarily affirmed "for substantially the reasons stated in [the district court's] two well-reasoned and scholarly opinions." Pet. App. 4a.

REASONS FOR GRANTING THE PETITION

Courts have explicitly and repeatedly recognized that the "circuits are divided over whether detrimental reliance or prejudice is required to recover in deficient SPD cases." *Burke v. Kodak Ret. Income Plan*, 336 F.3d 103, 112 (2d Cir. 2003), *cert. denied*, 540 U.S. 1105 (2004); *see also Washington v. Murphy Oil USA, Inc.*, 497 F.3d 453, 458 n.1 (5th Cir. 2007). This Court should grant review to resolve that widely disputed and exceptionally important question of ERISA interpretation.

The circuits have adopted three irreconcilable standards regarding the showing that a plan participant (or beneficiary) must make to recover benefits based on a deficient SPD. Six circuits apply a reliance-or-prejudice standard that requires the plaintiff to "show some significant reliance upon, or possible prejudice flowing from, the faulty plan description." *Govoni v. Bricklayers, Masons & Plasterers Int'l Un-*

ion of Am., Local No. 5 Pension Fund, 732 F.2d 250, 252 (1st Cir. 1984) (Breyer, J.); *see also, e.g.*, *Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1519 (10th Cir. 1996). In contrast, three other circuits have held that "when the terms of an SPD and an ERISA plan conflict . . . , the employee need not show reliance or prejudice" to recover benefits based on the terms of the SPD. *Washington*, 497 F.3d at 458-59. The Second Circuit's "likely harm" standard—which permits recovery whenever a participant can show that he was likely harmed by a deficiency in the SPD and the employer is unable to prove harmless error—has not been adopted by *any* other circuit.

Such pervasive disagreement on a fundamental issue of ERISA law is incompatible with ERISA's goal of facilitating the "uniform national treatment of pension benefits." *Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541 U.S. 1, 17 (2004) (internal quotation marks omitted). As long as that disagreement persists, a plan that has participants in the Second Circuit will be subject to a different SPD liability standard than a plan in any other circuit, and a plan that has participants across the country will be subject to three conflicting liability standards. These regulatory variations generate administrative inefficiencies that inevitably increase the cost of sponsoring an employee benefit plan. Moreover, in the Second Circuit and the three circuits that do not require a showing of even "likely harm," those increased administration costs are exacerbated by the ability of plan participants to recover benefits based on a deficient SPD without demonstrating that they read—much less relied upon—the SPD. Conferring such windfall recoveries on plan participants conflicts with this Court's precedent (*see Curtiss-Wright Corp. v. Schoonejon-*

gen, 514 U.S. 73 (1995)) and undermines ERISA's statutory objectives by deterring the formation of new benefit plans and potentially jeopardizing the solvency of existing plans.

I. THE CIRCUITS HAVE SPLIT THREE WAYS REGARDING THE SHOWING THAT A PLAN PARTICIPANT MUST MAKE TO RECOVER BASED ON A DEFICIENT SPD.

This Court's review is warranted to determine the showing that a plan participant must make to recover benefits based on an inconsistency between the SPD (or similar plan disclosure) and the plan itself. The circuits have adopted three fundamentally irreconcilable responses to this frequently recurring question of ERISA law.

A. Six Circuits Require A Plan Participant To Show Reliance Or Prejudice.

The majority of circuits that have addressed the issue have held that a plan participant must make an individualized showing of reliance or prejudice to recover benefits based on a conflict between the SPD and the plan.

The reliance-or-prejudice standard originated in the First Circuit. In *Govoni v. Bricklayers, Masons & Plasterers International Union of America, Local No. 5 Pension Fund*, 732 F.2d 250 (1st Cir. 1984), the First Circuit held that a plaintiff was not entitled to recover benefits based on a deficient SPD that failed to apprise participants that retirement benefits could be diminished due to certain breaks in service. *Id.* at 252 (Breyer, J.). The court explained that, "to secure relief, [the participant] must show some significant reliance upon, or possible prejudice flowing from, the faulty plan description." *Id.* The court determined

that the plaintiff had not satisfied that standard because it could "find[ ] no evidence of prejudice" to the plaintiff, whose break in service had taken place before the deficient SPD had been issued. *Id.* at 253; *see also Fenton v. John Hancock Mut. Life Ins. Co.*, 400 F.3d 83, 88 (1st Cir. 2005) (applying *Govoni* test); *Bachelder v. Commc'ns Satellite Corp.*, 837 F.2d 519, 523 (1st Cir. 1988) (same).

The five other circuits that have subsequently adopted the reliance-or-prejudice standard have either explicitly or implicitly followed the reasoning of *Govoni*. In *Aiken v. Policy Management Systems Corp.*, 13 F.3d 138 (4th Cir. 1993), for example, the Fourth Circuit "adopt[ed] *Govoni*'s disjunctive construction as [its] own" and held that the plaintiff "must show some significant reliance upon, or possible prejudice flowing from," the deficient SPD. *Id.* at 141 (emphasis omitted); *see also Stilner v. Beretta U.S.A. Corp.*, 74 F.3d 1473, 1478 (4th Cir. 1996) (en banc) ("to secure relief under ERISA based on representations in a summary plan description that are inconsistent with provisions of the other official plan documents, an ERISA claimant must demonstrate that he either relied upon or was prejudiced by those representations").

Similarly, in *Greeley v. Fairview Health Services*, 479 F.3d 612 (8th Cir. 2007), the Eighth Circuit explicitly rejected the Second Circuit's "likely harm" approach—explaining that the district court had "erred by adopting a 'likely harm' prejudice standard" based on Second Circuit precedent. *Id.* at 614. The Eighth Circuit held that, "to secure relief on the basis of a faulty summary plan description, the claimant must show some significant reliance on, or possible prejudice flowing from the summary." *Id.* (internal quotation marks omitted). The court con-

cluded that the plaintiff had failed to satisfy the reliance-or-prejudice standard because he "offered no evidence that he changed his course of action or otherwise relied on the faulty SPD," which provided a longer period of disability benefits than the plan itself. *Id.* at 615. "[F]inancial loss, without detrimental reliance," the court explained, "provides an insufficient basis for recovery." *Id.*; *see also Harris v. Blue Cross Blue Shield*, 995 F.2d 877, 880 & n.3 (8th Cir. 1993) (holding that the reliance-or-prejudice standard applies to deficient SMMs).

The Tenth Circuit has also explicitly adopted *Govoni*'s reliance-or-prejudice standard. In *Chiles v. Ceridian Corp.*, 95 F.3d 1505 (10th Cir. 1996), the Tenth Circuit held that "[o]nly where employees rely on an ambiguous or faulty SPD, or otherwise show prejudice from the inconsistency between the SPD and the master plan document, is relief appropriate." *Id.* at 1519. The court explained that "[a]ny other rule would allow a windfall for some employees." *Id.* Applying the reliance-or-prejudice standard, the court held that it was inappropriate to resolve on summary judgment whether a class of plaintiffs was entitled to recover additional long-term disability benefits based on the terms of an SPD. *Id.* The court directed that, on remand, "*each* individual plaintiff must demonstrate some reasonable reliance on the SPD provision or prejudice flowing from the inconsistency between the SPD and the Plan master document." *Id.* (emphasis added). "The issue of detrimental reliance," the Tenth Circuit concluded, "is not appropriate for class action determination." *Id.*

The Seventh Circuit also applies the reliance-or-prejudice standard. In *Hightshue v. AIG Life Insurance Co.*, 135 F.3d 1144 (7th Cir. 1998), the Seventh Circuit concluded that a plaintiff was unable to re-

cover based on alleged inconsistencies between the coverage exclusions identified in the SPD and the more extensive list of exclusions in the plan because she had not demonstrated either reliance or prejudice. *Id.* at 1149. The plaintiff could not "show reliance," the Seventh Circuit explained, "because she did not review the SPD prior to her accident," and she could not show "prejudice," the court continued, because "her [disability] claim was evaluated on the merits" by the plan administrator. *Id.*; *see also Health Cost Controls of Ill. v. Washington*, 187 F.3d 703, 711 (7th Cir. 1999) (when the plan and the SPD conflict, the plan will control "unless the plan participant or beneficiary has reasonably relied on the summary plan description to his detriment").

Finally, in *Branch v. G. Bernd Co.*, 955 F.2d 1574 (11th Cir. 1992), the Eleventh Circuit held that, "to prevent an employer from enforcing the terms of a plan that are inconsistent with those of the plan summary, a beneficiary must prove reliance on the summary." *Id.* at 1579. In so doing, the Eleventh Circuit explicitly rejected the district court's conclusion that the plaintiff could recover without demonstrating either reliance or prejudice, which the court of appeals condemned as "a form of strict liability." *Id.* at 1578. The court of appeals explained that an SPD is intended to "insur[e] that employees are fully and accurately apprised of their rights under the plan" and that "when a beneficiary fails to read or rely on the summary, whether it is accurate or not, the beneficiary . . . prevents full apprisal of the rights under the plan." *Id.* at 1579. "Beneficiaries must do their part," the court concluded, and therefore should not be permitted to recover where they cannot demonstrate that they read—much less relied on—an SPD. *Id.*; *see also Heffner v. Blue Cross &*

Blue Shield of Ala., Inc., 443 F.3d 1330, 1340 (11th Cir. 2006) (same).

B. Three Circuits Do Not Require Any Showing Of Reliance Or Prejudice.

In direct conflict with the majority of circuits that have addressed the issue, the Third, Fifth, and Sixth Circuits do not require a plan participant to make any showing of reliance or prejudice to recover benefits based on a conflict between an SPD and the plan. In those three circuits, the participant is entitled to recovery simply by establishing the existence of a legal deficiency in the SPD—even if the participant never read the SPD.

In *Burstein v. Retirement Account Plan for Employees of Allegheny Health Education & Research Foundation*, 334 F.3d 365 (3d Cir. 2003), the Third Circuit held that "a plan participant who bases a claim for plan benefits on a conflict between an SPD and plan document need neither plead nor prove reliance on the SPD." *Id.* at 381. According to the Third Circuit, plan benefits under ERISA are "contractual" in nature and "a court should read the terms of the 'contract' to include the terms of a plan document, as superseded and modified by conflicting language in the SPD." *Id.* In adopting this strict-liability approach, the Third Circuit explicitly "recognize[d] that other Courts of Appeals that have spoken to this issue have taken differing positions on this question." *Id.* at 380; *see also id.* at 380 n.20 (citing decisions of the First, Fourth, Seventh, and Eleventh Circuits).

The Fifth Circuit has also expressly acknowledged the split in authority on this issue, and has characterized the disagreement as even more extensive than the split identified by the Second and Third

Circuits. *See Washington v. Murphy Oil USA Inc.*, 497 F.3d 453, 458 n.1 (5th Cir. 2007) ("there appears to be a *five*-way circuit split regarding whether an ERISA claimant needs to establish reliance and/or prejudice based on the conflicting terms of an SPD") (emphasis added). Based on contract-law principles and the Third Circuit's reasoning in *Burstein*, the Fifth Circuit adopted the no-reliance-or-prejudice standard. *Id.* at 458-59. According to the Fifth Circuit, "when the terms of an SPD and an ERISA plan conflict and the terms of the conflicting SPD unequivocally grant the employee with a vested right to benefits, the employee need not show reliance or prejudice." *Id.*

The Sixth Circuit applies the same no-reliance-or-prejudice approach. The Sixth Circuit has reasoned that, in light of the importance of SPDs to plan participants, "it is natural for courts to hold the SPD controlling when it conflicts with the plan itself." *Flacche v. Sun Life Assurance Co. of Can. (U.S.)*, 958 F.2d 730, 736 (6th Cir. 1992); *see also Edwards v. State Farm Mut. Auto. Ins. Co.*, 851 F.2d 134, 137 (6th Cir. 1988) ("existing precedent does not dictate that a claimant who has been misled by summary descriptions must prove detrimental reliance").

C. The Second Circuit's "Likely Harm" Standard Is Inconsistent With The Approach Of Every Other Circuit That Has Addressed The Issue.

The Second Circuit stands alone in applying a standard that permits a plan participant to recover based on a conflict between the SPD and the plan whenever an employer is unable to rebut the participant's showing of "likely harm."

The Second Circuit adopted this "likely harm" standard in *Burke*, where it expressly acknowledged that the "circuits are divided" regarding the showing that a plaintiff must make to recover based on a deficient SPD. 336 F.3d at 112. The Second Circuit declined to follow the six circuits that apply the reliance-or-prejudice standard because, in its view, "requiring plan participants or beneficiaries to show detrimental reliance to recover for a deficient SPD contravenes ERISA's objective to promote distribution of accurate SPDs to employees." *Id.* at 106. The court instead held that plan participants need only make the significantly reduced showing that they were "*likely* to have been harmed as a result of a deficient SPD." *Id.* at 113 (emphasis in original). "Where a participant makes this initial showing," the participant is entitled to recover unless the employer is able to "rebut it through evidence that the deficient SPD was in effect a harmless error." *Id.*

Applying that "likely harm" standard, the Second Circuit held in *Burke* that a beneficiary was entitled to recover survivor income benefits, even though her deceased spouse had failed to file an affidavit mandated by the plan, because the relevant section of the SPD did not mention the affidavit requirement. 336 F.3d at 114. According to the Second Circuit, the plaintiff had made the requisite showing of likely harm because the "conspicuous absence of the . . . affidavit requirement in the" relevant section of the SPD "likely led the [plaintiff and her husband] to believe that an affidavit was unnecessary." *Id.* Recovery was appropriate, the court concluded, because the employer was unable to introduce evidence that rebutted the court's assessment of the "likely" implications of the deficient SPD. *Id.*

The district court expressly applied *Burke*'s "likely harm" standard in this case over CIGNA's objection that each class member should be required to make an individualized showing of injury attributable to CIGNA's allegedly deficient SPD. Pet. App. 131a. The district court found that respondents had made the requisite showing of "likely harm" because the SPD "likely . . . led plan participants to believe that wear away was not a likely result of the transition to Part B." *Id.* at 136a (internal quotation marks omitted). According to the district court, the possibility that the SPD might have led plan participants to hold an erroneous "belie[f]" about the features of CIGNA's cash balance plan was sufficient to entitle them to class-wide relief. *Id.* The district court thus did not require even a single class member to demonstrate that he actually read the SPD, that he harbored this erroneous "belie[f]" as a result of the SPD, or that this erroneous understanding of the plan benefits caused him to take (or refrain from taking) some action, such as looking for a new job. *Id.* at 164a-65a; *see also id.* at 135a (an "erroneous belief" about the scope of benefits "fostered by inaccurate notices regarding the terms of [a] retirement plan[ ] constitute[s] likely harm"). The Second Circuit summarily affirmed this result. *Id.* at 4a.

It is impossible to reconcile the application of *Burke*'s "likely harm" standard in this case with the standard that would have been applied in any of the nine other circuits that have addressed the issue. In the First, Fourth, Seventh, Eighth, Tenth, and Eleventh Circuits, every member of the plaintiff class would have been required to make an individualized showing that they relied on or were prejudiced by CIGNA's allegedly deficient SPDs. *See, e.g., Chiles*, 95 F.3d at 1519 (in a class action, "*each* individual

plaintiff must demonstrate some reasonable reliance on the SPD provision or prejudice flowing from the inconsistency between the SPD and the Plan master document") (emphasis added). In contrast, in the Third, Fifth, and Sixth Circuits, respondents would have been entitled to recover without making even the minimal showing of "likely harm" required in this case.

That deep division in authority warrants this Court's review and resolution.

II. THE QUESTION PRESENTED IS EXCEPTIONALLY IMPORTANT TO BOTH PLAN SPONSORS AND PLAN PARTICIPANTS.

The Court should grant review because the extensive circuit split on the frequently recurring question of ERISA interpretation presented in this case creates intolerable regulatory uncertainty and because the Second Circuit's "likely harm" standard is fundamentally at odds with ERISA's statutory objectives and substantive provisions.

A. ERISA was designed to establish a uniform set of substantive and procedural standards governing employee benefit plans and a uniform set of remedies for violations of those regulatory requirements. *See Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 379 (2002) (ERISA was designed to establish a "uniform regime of ultimate remedial orders and awards when a violation has occurred").

That goal of remedial uniformity is incompatible with the divergent showings that the circuits require where plaintiffs are seeking to recover based on an inconsistency between an SPD and a plan. It directly contravenes ERISA's regulatory objectives for plaintiffs in the Third, Fifth, and Sixth Circuits to recover without making any showing of reliance or

prejudice and for plaintiffs in the Second Circuit to recover simply by making the minimal showing of "likely harm," while plaintiffs in the First, Fourth, Seventh, Eighth, Tenth, and Eleventh Circuits must make an individualized showing of reliance or prejudice to recover. And just as ERISA plaintiffs should be required to meet a single burden of proof no matter the circuit in which they file suit, ERISA defendants should be subject to the same liability whether they are sued in New York City, Atlanta, or Philadelphia.

The regulatory uncertainty directly attributable to this circuit split results in the disparate treatment of ERISA litigants—both plaintiffs and defendants—depending on the circuit in which suit is filed. And it inevitably generates administrative inefficiencies for plan administrators. Indeed, numerous plans (including the CIGNA Plan) have participants who work and reside throughout the country. Plan administrators preparing an SPD for those plans are therefore compelled to draft the document against the backdrop of an uncertain and unpredictable regulatory framework that affords different remedial rights to participants in different jurisdictions. Even more problematic is the consideration of participants' benefits claims by plan administrators utilizing different standards of proof depending on where the participant resides or where, based on ERISA's permissive venue provisions (29 U.S.C. § 1132(e)(2)), the participant is likely to file suit. The Court's review is necessary to restore the regulatory uniformity that Congress sought to establish when it enacted ERISA.

B. Review is also warranted because the "likely harm" standard adopted by the Second Circuit undermines ERISA's statutory objectives by exposing

existing benefit plans to unforeseen liabilities and deterring the formation of new plans.

Much like the no-reliance-or-prejudice standard adopted in three circuits, the Second Circuit's "likely harm" standard is functionally equivalent to holding employers strictly liable for deficiencies in their SPDs. In this case, CIGNA was held liable for tens of millions of dollars in additional benefits simply because CIGNA's SPDs "likely . . . led plan participants to" hold erroneous "belie[fs]" about the features of their pension plan. Pet. App. 136a (internal quotation marks omitted). The Second Circuit upheld that liability even though there is no individualized proof that, after reading the SPDs, any of the 26,000 class members modified their conduct based on an erroneous understanding of their plan benefits. *Id.* at 164a-65a; *see also id.* at 167a (rejecting CIGNA's argument "that employees who received but did not read the misleading notices and disclosures should be considered not to have demonstrated likely harm").

It is squarely at odds with ERISA's carefully formulated statutory objectives to confer windfall recoveries on plan participants who did not rely upon and were not prejudiced by a deficient SPD—and who, in fact, may never have even read the SPD. As the Tenth Circuit explained when it adopted the reliance-or-prejudice standard, such windfall recoveries "unfairly increase costs for employers and their insurers, who rely on the terms of the plan in providing benefits and coverage. This in turn could jeopardize the solvency of the plan with respect to the remaining employees." *Chiles*, 95 F.3d at 1519.

Under this strict-liability framework, employers who have already established ERISA plans will be

compelled to guard against SPD-based liability by distributing needlessly prolix SPDs that are costly to produce and virtually impossible to comprehend. Moreover, the potential for such unpredictable and unwarranted liabilities will inevitably compel some employers to withhold wage increases and decrease benefits, and may dissuade other employers from sponsoring ERISA plans at all.

The Second Circuit's "likely harm" standard is also inconsistent with this Court's decision in *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995). In the pending case, the district court crafted its so-called "A+B" remedy under the "likely harm" standard by reading "the terms of Part B" of the CIGNA Plan to "have been . . . modified by CIGNA's October 1998 and September 1999 Summary Plan Descriptions." Pet. App. 218a. Thus, based on the allegedly deficient SPDs, the court ordered the Plan to pay additional benefits to class members that were not provided under the terms of the Plan itself. But *Curtiss-Wright* makes clear that the publication of an SPD can only modify the terms of a plan where the publication of an SPD satisfies the plan's formal amendment procedures. 514 U.S. at 83-85; *see also* 29 U.S.C. § 1102(b)(3) (requiring that every plan "provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan"). Because the CIGNA Plan does not designate the publication of an SPD as a means of amending the Plan, and because the SPD was not published by the body with authority to amend the Plan, the courts below erred in holding under the "likely harm" standard that the allegedly deficient SPDs had "modified" the Plan to provide the benefits awarded by the district court.

At a minimum, before imposing such "substantial" liability on a plan and disregarding its formal amendment procedures (Pet. App. 219a), a court should make certain that each of the participants who are seeking recovery based on a deficient SPD relied on or was prejudiced by those deficiencies. Indeed, this Court has endorsed similar individualized determinations in other cases. *See United States v. Hays*, 515 U.S. 737, 744 (1995) ("individualized harm" is "require[d]" under "our standing doctrine"). It should grant certiorari and do so again here in order to ensure that benefit plans are not compelled to absorb potentially devastating liabilities to participants who suffered no injury as result of a non-compliant SPD.

III. If The Court Does Not Grant Plenary Review, It Should Hold The Petition And Then GVR The Case In Light Of *Conkright v. Frommert*.

If the Court does not grant plenary review, then it should hold this petition pending the disposition of *Conkright v. Frommert*, No. 08-810, and then GVR the case in light of that decision.

In *Frommert*, the Court will decide whether "a district court has 'allowable discretion' to adopt any 'reasonable' interpretation of the terms of an ERISA plan when the plan interpretation issue arises in the course of calculating additional benefits due under the plan as a result of an ERISA violation." Pet. for Writ of Cert. at i, *Frommert* (No. 08-810). The Court's resolution of that question will have a direct bearing on the propriety of the relief ordered by the district court in this case.

In *Frommert*, the Second Circuit held that the district court did not err in crafting its own remedy

for an ERISA violation and declining to afford any deference to the remedy proposed by the plan administrator. *Frommert v. Conkright*, 535 F.3d 111, 118 (2d Cir. 2008), *cert. granted*, 129 S. Ct. 2860 (2009). According to the Second Circuit, the plan administrator's proposed remedy did not warrant deference because the administrator did not develop that remedy as part of a benefit determination. *Id.*; *see also id.* at 119 ("Defendants-Appellants have identified no authority in support of the proposition that a district court must afford deference to the mere *opinion* of the plan administrator in a case, such as this, where the administrator had previously construed the same terms and we found such a construction to have violated ERISA.").

Similarly, in this case, the district court found that CIGNA was the "de facto" administrator of the Plan. Pet. App. 87a. It nevertheless declined to afford any deference to the remedy that CIGNA proposed for the alleged deficiencies in its SPDs—a recalculation of participants' opening account balances—and instead formulated its own "A+B" remedy. *Id.* at 197a-98a. Accordingly, if this Court decides in *Frommert* that an administrator's remedial interpretations are entitled to deference when made outside the benefit-determination setting, then the Second Circuit and district court should be required to revisit the propriety of the "A+B" remedy in light of the deference properly afforded to the views of the plan administrator.

Respondents themselves have recognized the overlap between the issues in *Frommert* and those presented here. They filed an *amicus curiae* brief in that case in which they acknowledged that the "decision in *Frommert* may affect their rights to retirement benefits." *Amici* Br. of Janice C. Amara et al.

at 1, *Frommert* (No. 08-810). Thus, at a minimum, the petition should be held pending the resolution of that closely related case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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January 4, 2010

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 0.23 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE

REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 6th day of October, two thousand nine.

PRESENT: DENNIS JACOBS,
Chief Judge,
AMALYA L. KEARSE,
CHESTER J. STRAUB,
Circuit Judges.

JANICE C. AMARA, GISELA R. BRODERICK, ANNETTE S. GLANZ, individually and on behalf of all others similarly situated,
Plaintiffs-Appellants-Cross-Appellees,

-v.-

08-3388-cv (L)
08-3460-cv (XAP)

CIGNA CORPORATION and CIGNA PENSION PLAN,
Defendants-Appellees-Cross-Appellants.

APPEARING FOR PLAINTIFFS:	STEPHEN R. BRUCE, ALLISON C. PIENTA, Stephen R. Bruce Law Offices, Washington, D.C.; THOMAS G. MOUKAWSHER, Moukawsher & Walsh, LLC, Hartford, Connecticut.
APPEARING FOR DEFENDANTS:	JOSEPH J. COSTELLO, JEREMY P. BLUMENFELD, JAMIE M. KOHEN, Morgan, Lewis, & Bockius LLP, Philadelphia, Pennsylvania.

Appeal from a judgment of the U.S. District Court for the District of Connecticut (Kravitz, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court be **AFFIRMED**.

We assume the parties' familiarity with the underlying facts, the procedural history, and the issues presented for review.

In this ERISA appeal, the parties cross-appeal from two decisions of the district court. Plaintiffs-appellants argue that the district court erred in:

1) concluding that it lacked the authority to provide complete relief for defendants-appellees' ERISA violations;

2) failing to require prior benefit provisions to be reinstated until proper notice of reductions was provided;

3) failing to require CIGNA to pay comparable benefits to affected participants until proper notice was provided; and

4) ruling that CIGNA did not need to disclose the amendment to the "Rehire Rule."

Defendants-appellees cross-appeal, arguing that the district court erred by awarding plaintiffs-appellants more pension benefits than they were told they would receive under the pension plan. They also contend that the district court properly denied plaintiffs-appellants' request for additional annual benefit accruals.

We affirm the judgment of the district court for substantially the reasons stated in Judge Kravitz's two well-reasoned and scholarly opinions. *See Amara v. Cigna Corp.*, 559 F. Supp. 2d 192 (D. Conn. 2008); *Amara v. Cigna Corp.*, 534 F. Supp. 2d 288 (D. Conn. 2008).

Based on the foregoing reasons, we hereby **AFFIRM** the judgment of the district court.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE,
CLERK

By:_____

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANICE C. AMARA, individually and on behalf of others similarly situated,	:	
Plaintiff,	:	
v.	:	Case No. 3:01CV2361(MRK)
CIGNA CORPORATION and CIGNA PENSION PLAN,	:	
Defendants.	:	

MEMORANDUM OF DECISION

Since the mid-1980s, hundreds of U.S. employers have converted their traditional defined benefit pension plans into what are known as "cash balance" retirement plans. In fact, according to the Pension Benefit Guaranty Corporation, over 1,500 cash balance plans and other similar hybrid plans were in existence as of 2003, providing pension benefits to over 8 million participants, approximately one-quarter of the total employee population covered by

defined benefit plans. *See* Pension Benefit Guaranty Corp., Pension Insurance Data Book 2004, at 59-60 (2005), *available at* http://www.pbgc.gov/docs/2004databook.pdf. Like many other corporations, CIGNA Corporation converted its traditional defined benefit plan to a cash balance plan, in 1998.

Despite their popularity among employers, cash balance plans have spawned considerable litigation. This case is yet another in a long list of cases challenging an employer's conversion to a cash balance retirement plan under the Employee Retirement Income Security Act ("ERISA").[1]

Plaintiffs consist of a class of current and former CIGNA employees who participated in CIGNA's traditional defined benefit plan before January 1, 1998 and have participated in CIGNA's cash balance plan since that time. *See* Memorandum of Decision [doc. # 61]. Plaintiffs and Defendants raise numerous class, sub-class, and individual claims and defenses. *See* Order Under Federal Rule 23(c)(1)(B)

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[1] *See, e.g.*, *Register v. PNC Fin. Servs. Group, Inc.*, 477 F.3d 56 (3d Cir. 2007); *Campbell v. BankBoston, N.A.*, 327 F.3d 1 (1st Cir. 2003); *Berger v. Xerox Corp. Ret. Income Guarantee Plan*, 338 F.3d 755 (7th Cir. 2003); *Esden v. Bank of Boston*; 229 F.3d 154 (2d Cir. 2000); *Custer v. S. New Eng. Tel. Co.*, No. 3:05cv1444 (SRU), 2008 WL 222558 (D. Conn. Jan. 25, 2008); *Finley v. Dun & Bradstreet Corp.*, 471 F. Supp. 2d 485 (D.N.J. 2007); *Richards v. FleetBoston Fin. Corp.*, 427 F. Supp. 2d 150 (D. Conn. 2006); *Hirt v. Equitable Ret. Plan*, 441 F. Supp. 2d 516 (S.D.N.Y. 2006); *In re Citigroup Pension Plan ERISA Litig.*, 470 F. Supp. 2d 323 (S.D.N.Y. 2006); *In re J.P. Morgan Chase Cash Balance Litig.*, 460 F. Supp. 2d 479 (S.D.N.Y. 2006); *Eaton v. Onan Corp.*, 117 F. Supp. 2d 812 (S.D. Ind. 2000). This is not the first case involving CIGNA's conversion. *See Depenbrock v. CIGNA Corp.*, 389 F.3d 78 (3d Cir. 2004).

[doc. # 241] (listing the class, sub-class, and individual claims and defenses). At the risk of over-simplification, however, the central issues in this case may generally be described as follows: whether CIGNA's cash balance plan is age discriminatory or otherwise violates certain non-forfeiture and anti-backloading rules under ERISA; whether CIGNA gave the notices and other disclosures required by ERISA; and whether the information CIGNA provided its employees about the conversion and the cash balance plan in summary plan descriptions and other materials satisfied ERISA's requirements.

The questions raised in this case are vitally important to both employers and employees (and their families). Given how profoundly significant retirement plans and planning are to the great majority of Americans – employees and employers alike – this is one area where the answers should be clear, explicit, and definite. Regrettably, however, the answers to the issues raised by these parties are not entirely clear, in large measure due to the fact that ERISA, and the regulations under it, are often lamentably obscure – to describe them as a tangled web does not do them justice. On top of that, there are conflicting decisions around the country on identical issues, making planning for nationwide enterprises impossible. Difficult, time-consuming, and expensive litigation with uncertain results – such as this case represents – is assuredly not a sensible way to manage the Nation's retirement system for either employers or employees. Sadly, at least for now, litigation appears to be the only option available to them.

In this case, the Court conducted a bench trial over seven days, hearing testimony (live and via deposition) from more than a dozen witnesses and

receiving into evidence over 800 exhibits. The parties submitted detailed stipulations, proposed findings of fact and conclusions of law, and pre-trial briefs, and following trial, they submitted post-trial briefs and proposed findings of fact and conclusions of law. The Court also held a lengthy oral argument following completion of post-trial briefing. Counsel for each side distinguished themselves throughout this case by their skillful advocacy, professionalism, and civility. The Court is grateful to each of them.

In accordance with Rule 52 of the *Federal Rules of Civil Procedure*, the Court makes the following findings of fact and conclusions of law. As a preface to those findings and conclusions, the Court would note that these are close questions of law, involving complex and technical regulations, and the facts underlying this case are also complicated and extensive. Risking oversimplification, the Court can summarize as follows its general findings and conclusions to the key issues noted above: CIGNA's Plan is not age discriminatory and does not violate the non-forfeiture and anti-backloading rules under ERISA; in effectuating the conversion to the cash balance plan, CIGNA did not give a key notice to employees that is required by ERISA; and CIGNA's summary plan descriptions and other materials were inadequate under ERISA and in some instances, downright misleading. ERISA gives employers substantial leeway in designing a pension plan, and the Court believes that CIGNA's Plan complies with the relevant statutory provisions. However, ERISA also emphasizes the importance of disclosure by employers to employees regarding the details of the company's pension plan, to enable employees to plan for their retirement and to make decisions of profound importance for their lives. This is where

CIGNA failed to fulfill its obligations; the company did not provide its employees with the information they needed to understand the conversion from a traditional defined benefit plan to a cash balance plan and its effect on their retirement benefits. As noted below, the Court will require further briefing on the issue of what remedies are required or appropriate in view of the Court's rulings on liability.

I. Factual Background

The summary that follows, which is based upon the facts adduced at trial, is intended to provide general background information needed to understand the parties' dispute. Further facts bearing directly on certain contested issues are discussed in later sections.

Background Regarding Retirement Plans. A traditional defined benefit plan provides an eligible employee with an annuity (an annual benefit payable for the life of the employee) that is calculated as a percentage of the employee's salary multiplied by the employee's years of service. "Salary" may be defined as the highest salary the employee achieved, an average of the employee's salary over the last several years of service, or some other similar definition. For example, an employee might accrue a pension benefit beginning at age 65 of 1.5% of salary for every year of service; an employee who worked for the company for 30 years would then have an annual retirement benefit of 45% of salary. If a retirement plan defines "salary" as the employee's highest salary, then the employee's plan benefits would increase as the employee moves closer to retirement and enjoys the higher salary that typically comes with longer service. By design, participants in traditional defined benefit plans often

earn most of their benefits in the last several years of service. Also by design, the employer bears the risk of fluctuations in interest rates or the market over the life of the retired employee.

Traditional defined benefit plans often offer subsidized early retirement benefits, which encourage employees to remain with the company until the benefits are available and then to leave. A subsidized early retirement benefit is a benefit payable before normal retirement age (often as of age 55) that has an overall value that is greater than the present value of the benefit payable at normal retirement age (usually age 65). If the employee does not retire at the earliest opportunity to obtain the subsidized early retirement benefit – say, 55 – the value of that benefit diminishes with each passing year until it is completely lost as of the date of normal retirement – for example, by age 65.

By contrast to traditional defined benefit plans, defined contribution plans do not offer fixed assurances of annual benefits for life upon retirement. Instead, the employer contributes a certain amount (for example, 10% of each year's salary) to the plan each year. Each employee is entitled to the money allocated to a separate individual retirement account, plus the upside risk of favorable investment returns. However, the employee bears the risk of fluctuations in interest rates or the market once the employer contributes the funds to the employee's retirement account.

Cash balance plans "imitate some features" of defined contribution plans by referring to individual accounts and allocations, *Esden v. Bank of Boston*, 229 F.3d 154, 158 (2d Cir. 2000), but the accounts and allocations are only "hypothetical," not real. The

"employee has no actual account, the employer makes no contributions to the employee account, and so there is no account balance to which interest might be added." *Berger v. Xerox Corp. Ret. Income Guarantee Plan*, 338 F.3d 755, 758 (7th Cir. 2003). Though they may imitate some of the features of defined contribution plans, cash balance plans are governed by the rules for defined benefit plans. *See Esden*, 229 F.3d at 158.

Cash balance plans were introduced in the mid-1980s, and hundreds of employers have adopted them since then. Recent estimates are that between one-quarter and one-third of large U.S. employers sponsor a cash balance plan. *See* Pension Benefit Guaranty Corp., Pension Insurance Data Book 2004, at 59-60. Though Plaintiffs in this case contend that cash balance plans discriminate against older workers (an issue the Court addresses below), depending on how the plan is configured, cash balance plans may provide advantages for both employees and employers. Because employees covered by cash balance plans earn benefits more evenly throughout their careers, those plans may provide increasingly more mobile employees more benefits than they could expect to receive under a traditional defined benefit plan, where benefits accrue primarily at the end of an employee's career. The accounts are also familiar to employees who are increasingly comfortable with 401(k)-type programs. Often, cash balance plans (unlike many traditional defined benefit plans) provide for payment of a lump sum benefit, giving employees the ability to manage their funds during their retirement. For an employer, while cash balance plans are not inherently more or less costly than traditional defined benefit plans, converting to a cash balance

plan can provide significant cost savings. For example, a 2004 Mellon Bank survey found that the long-term costs of plans converted to cash balance formulas were expected to decrease for 64% of plans. *See* Ex. 232, at 30; *see also* Ex. 28 (Interoffice Memo), at D12287 ("A cash balance approach allows us to provide the competitive benefit level of a defined contribution plan but reduce overall cost by earning more on our investments than we pay in the declared rate."); Ex. 31 (email from Gerry Meyn), at D029113 ("A conversion to a cash balance plan clearly reduces the ultimate benefits paid, and, of course, lowers the net pension liability . . . ."). Cash balance plans also allow employers to shed some or all of the risk of interest rate and market fluctuations during the employee's life. *See* Trial Tr. 1001:13 to 1002:4 (Mr. Sher, Defendants' expert, testifying that employees assume the risk of interest rate fluctuations with respect to annuities under cash balance plans).

In a cash balance plan, each eligible employee has a hypothetical account that receives benefit credits. One credit is referred to as a "pay credit," and it is equal to a percentage of the employee's salary. Pay credits can be defined in a number of different ways: they may be set as a fixed percentage of pay (5% of salary); they may be integrated with Social Security (3% of pay up to the Social Security wage base and 5% over the base); or they may vary with the employee's age or service (4% each year to age 40 and 5% each year thereafter), referred to as "graded pay credits." Cash balance plans also typically provide "interest credits," determined by applying a specified interest rate to the employee's hypothetical account balance. Some plans provide that the interest credit is a floating rate that changes

annually or more frequently and is tied to a market rate, such as the yield on selected U.S. Treasury securities. Others allow the interest credit rate to float subject to a maximum (say, 8%) or a minimum (say, 4%), or both. Unlike with many traditional defined benefit plans, which pay benefits as an annuity and do not include a lump sum option, benefits under a cash balance plan often are payable as either a lump sum that equals the hypothetical account balance or an annuity based upon the value of the account balance.

Many cash balance plans are the result of conversions from traditional defined benefit plans, and there are a variety of ways in which employers may provide for the conversion and transition to the new plan. One approach is to freeze the benefits payable under the prior plan and at the same time provide for the employees to receive benefit credits (both pay and interest credits) under the cash balance plan going forward. The prior plan benefits continue to be paid under the terms of the prior plan and the cash balance benefits are paid under the new plan. Under this approach, the employee has essentially two separate pension benefits, with different rules, formulas, and procedures governing them. This is the so-called "A plus B" approach discussed at trial.

Other employers instead provide the employee with an opening account balance. There are a variety of ways of establishing the opening account balance, though no legal requirements governing the creation of opening balances. *See* Ex. 13, at MER01798 (a consultant to CIGNA advised the company that opening balances "could even be zero if you wanted"); Ex. 533 (General Accounting Office Report), at 30 ("[C]urrent federal law does not govern

how plan sponsors set opening hypothetical account balances for cash balance plans . . . .").[2] One method of creating opening balances is to calculate the present value of the employee's normal retirement benefit (an annuity commencing at normal retirement age, usually age 65) under the prior plan as of the conversion date. Such a plan typically would also provide that each employee would in any event never receive less than the benefit earned under the prior plan as of the date of conversion under the pre-conversion benefit formula. Depending on how the employee's opening account balance and minimum benefit are calculated, the minimum benefit may be greater than the employee's account balance. This is the so-called "greater of A or B" approach referred to in the testimony.

CIGNA's Traditional Defined Benefit Plan. Before January 1, 1998, CIGNA had a traditional defined benefit plan for its employees, which will be referred to in this Opinion as "Part A." Part A provided two benefit formulas depending upon the individual's date of hire. Individuals hired before December 31, 1988 were known as "Tier 1 employees"; individuals hired after that date were "Tier 2 employees."

Tier 1 employees received 2% of final three-year average pay for each year of service up to 30 years, less a Social Security offset. Tier 1 employees with

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[2] The Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006) ("PPA"), subjects plan conversions occurring after June 29, 2005 to certain requirements, which can be found at 29 U.S.C. § 1054(b)(5)(B)(ii).

10 or more years of service also received a subsidized early retirement benefit; they could retire at age 55 and receive an immediate annuity benefit equal to the accrued age-65 benefit (not reflecting the Social Security offset, known as the "Social Security supplement"), reduced for early commencement by certain factors set forth in the Plan. Upon reaching age 65, the benefit would be reduced by the participant's Social Security offset.

Tier 2 employees received an age-65 annuity benefit equal to 1.67% of final five-year average pay for each year of service up to 35 years, less a Social Security offset. Tier 2 employees also received subsidized early retirement benefits; a Tier 2 employee with 15 years or more of service could retire at age 55 and receive an immediate annuity benefit equal to the accrued age-65 benefit (not reflecting the Social Security offset), reduced by 5% per year if benefits began before age 65 (thus 50% for commencement at age 55). Upon reaching age 62, the benefit payable would be reduced by the Social Security offset (adjusted to age 62).

Tier 1, but not Tier 2, employees also were eligible for a "Free 30%" survivor's benefit (the "Preserved Spouse's benefit"). Under this benefit, a portion of a participant's pension (generally 30%) would be payable after the participant's death for the remaining lifetime of the surviving spouse. Many plans effectively require participants to pay for the added value of the survivor's benefit, but under CIGNA's Part A, eligible Tier 1 employees received the benefit without charge.

A participant who wanted a larger portion to go to a surviving spouse (say, 50%) would pay a charge

based only on the difference between the Free 30% and the percent requested (here, 20%).

CIGNA's Part A did not offer a lump sum option. Participants could elect to receive their benefits in one of several different annuity options, but they could not receive their benefits in a lump sum. Under Part A, when an employee separated from CIGNA, their plan benefit remained frozen and did not grow, because it was based on the employee's earnings at CIGNA.

CIGNA's Conversion to Cash Balance Plan. During 1996 and 1997, CIGNA, along with outside consultants such as the William Mercer Co. ("Mercer"), engaged in planning for a conversion of its defined benefit pension plan to a cash balance plan. In accordance with its conversion plan, in November 1997, CIGNA's Chief Executive Officer ("CEO") signed an amendment to CIGNA's defined benefit pension plan freezing benefit accruals for all Tier 2 employees and for all Tier 1 employees with a combined age and years of service less than 45. The plan was that Tier 1 employees who had age and service credits of 45 or more would be grandfathered under the old Plan and thus continue to accrue benefits under Part A. All other employees would be moved to the new cash balance plan.

The November 1997 amendment provided in pertinent part as follows:

> Notwithstanding any other provision of the Plan, no Employee who, as of December 31, 1997, is a New Formula Participant or has a combined total of Years of Credited Service and age less than forty-five (45) shall accrue any additional benefits under the Plan after December 31, 1997. . . . *The foregoing*

> *cessation* and/or suspension in benefit accruals and exclusion from eligibility to participate in the Plan after December 31, 1997, *shall remain in effect until the adoption of a subsequent amendment to the Plan*, and such subsequent amendment may provide for benefit accruals under terms and conditions different from the Plan provisions in effect before 1998. No such subsequent amendment shall result in the accrued benefit of any Participant being less than such Participant's accrued benefit under the plan as of December 31, 1997.

Ex. 2 (Part A), at D00132 (Amendment No. 4) (emphasis added).

On December 21, 1998, CIGNA's CEO signed the plan document for the cash balance plan, Part B, as well as an updated Part A plan document. *See* Ex. 501 (Part A), at D10440; Ex. 1 (Part B), at D00349. Even though the cash balance plan document was not signed until the end of 1998, the cash balance plan was made retroactive to January 1, 1998 so that Part B participants received retirement pay and interest credits for the entire year of 1998. *See* Ex. 519.

Non-grandfathered employees who were employed as of December 31, 1997 became participants in Part B. Additionally, any employees hired for the first time after January 1, 1998 automatically became participants in Part B upon their hire. These individuals are not part of the Class in this case; the Class includes only those Part B participants who previously were participants in Part A.

Part B provides that grandfathered participants in Part A who left CIGNA before December 31, 1997 and were rehired after adoption of Part B would become participants in Part B upon their rehire. As a result, those former employees who rejoined CIGNA between January 1, 1998 and December 21, 1998 (when Part B was signed) were placed into Part B. However, in a lawsuit filed by one such rehire, John Depenbrock, the United States Court of Appeals for the Third Circuit held that certain rehires should have remained in Part A, because the amendment creating Part B and establishing its rule applicable to rehires was not valid until signed by CIGNA's CEO on December 21, 1998. *See Depenbrock v. CIGNA Corp.*, 389 F.3d 78, 82-83 (3d Cir. 2004). As a result of the *Depenbrock* decision, other grandfathered Part A participants who were rehired between January 1, 1998 and December 21, 1998 were notified in February 2005 that their benefits would be recalculated under Part A. *See* Ex. 539 (Letters from plan administrator regarding *Depenbrock* dated February 4, 2005). There are approximately 194 employees who fall into this group. *See* Ex. 173, at SuppD15466.[3]

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[3] Former CIGNA employees who were rehired between December 21, 1998 and December 31, 2000 became participants in Part B and had their Part A benefits converted into an opening account balance. Employees rehired after December 31, 2000 became entitled to two different benefits based on two different formulas: one based on the benefits earned under Part A before they left CIGNA and a separate benefit based on their service in Part B once they were rehired. *See* Ex. 504 (Amendment No. 2 to Part B), at SuppD0481-SuppD0482.

Opening Balances. Non-grandfathered employees who were employed by CIGNA as of December 31, 1997 received a hypothetical opening account balance that was calculated by reference to their Part A accrued benefits. In particular, the opening account balance was calculated by taking the participant's current annual benefit at normal retirement age (age 65) and computing the actuarial value of that benefit based on a 6.05% interest rate and by using the 1983 (unisex) Group Annuity Mortality Table (GATT). A lower 5.05% interest rate was applied to the accrued benefit at age 62 for Tier 2 participants who were active employees on December 31, 1997 and whose age and service totaled 55 or greater.[4] Thus, older or longer-serving employees received a more favorable opening balance calculation than similarly-situated younger or shorter-service employees. By design, therefore, for employees with identical service and compensation histories before 1998, the older employee would always receive a greater opening account balance than the similarly-situated younger employee.

The opening balance did not, however, include the full value of the subsidized early retirement benefit, the Social Security supplement, or the Preserved Spouse's benefit. Also, the GATT

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[4] Because the age-62 benefit included some of the Part A early retirement benefits, a portion of those benefits was included in these participants' opening account balances. However, the full value of those benefits was not protected, and as discussed later, CIGNA acknowledged that early retirement benefits as a rule were not included either in participants' opening account balances or, correspondingly, in the lump sums available under Part B.

mortality tables were used to discount the retirement benefit for pre-retirement mortality – that is, the likelihood that the participant would die between his or her current age and the normal retirement age of 65. Plaintiff's expert Claude Poulin explained that this pre-retirement mortality discount would be approximately 10% for a 30- or 40-year-old employee. *See* Trial Tr. 211:14-22. The discount was applied for purposes of determining employee opening balances, and therefore, as an employee grew older and the risk of pre-retirement mortality diminished, the employee would not recoup the amount of the discount taken in calculating the employee's opening balance.

Benefit Credits. Part B participants also earn benefit credits that have both a pay and an interest component. These benefit credits are age- and service-favored – that is, Part B provides a higher credit rate to older or longer-service employees than similarly-situated younger or shorter-service employees. The benefit credits are also integrated with Social Security, meaning that Part B provides a higher credit on pay over the Social Security integration level, which is defined as one-half of the Social Security taxable wage limit each year (for example, $34,200 in 1998). Ex. 1 (Part B), at D00291; Ex. 10 (Sher Report), at 6.

The following table shows Part B's pay credit rates:

Age and Service Points	Rate Applied to Pay Up to Integration Level	Rate Applied to Pay Over Integration Level
Under 35	3 %	4.5 %
35-44	4 %	5.5 %
45-54	5 %	6.5 %
55-64	6 %	7.5 %
65 or More	7 %	8.5 %

Therefore, an employee whose age is 40 with 10 years of service would have age and service points of 50. Assuming a Social Security integration level of $43,500 and further assuming that the employee earned $60,000 in a particular year, the employee would receive a pay credit of $3,247.50 (5% of $43,500 plus 6.5% of $16,500). If that same employee was 60 (thus having 70 age and service points), she would receive a pay credit in that same year of $4,447.50 (7% of $43,500 plus 8.5% of $16,500). As a consequence of the Part B design, for any two participants who have the same service and compensation history, the older one will receive a pay credit for any given year that is the same or higher than the younger employee.

Participants in Part B also receive interest credits quarterly on their hypothetical account balances at a floating rate that is subject to change at the beginning of each calendar year. The annualized interest rate is the yield on five-year U.S. Treasury securities in the preceding November plus 0.25%, subject to a minimum rate of 4.5% and a maximum of 9.0%. *See* Ex. 1 (Part B), at D00293 (§ 4.2(b)). Thus, Plan participants bear the risk of interest rate fluctuations, within the rate corridor provided by the Plan. Interest rate credits continue

until the participant's account is paid out as a lump sum or annuity payments begin. In any given year, all participants earn interest at the same rate; the interest rate credit is thus the same for all participants, regardless of age or length of service.

Under Part B, at retirement, or upon termination of employment, a participant could elect to receive benefits in the form of a lump sum. Alternatively, a participant could elect to receive benefits in one of several other forms available, including a single life annuity (stream of monthly payments payable for life) or a joint and survivor annuity (stream of monthly payments for life, with additional payments payable to a spouse for the life of the spouse). *See* Ex. 1 (Part B), at D00307-D00309 (§ 7.2).

Minimum Benefits and Wear Away. Under the terms of Part B, employees receive the greater of a retirement benefit based on their hypothetical account balances or their minimum benefit, as defined in the Plan. The Plan defined "minimum benefit" as, "in the case of a Participant who has a Part A Accrued Benefit which is converted into an Initial Retirement Account, the Participant's Part A Accrued Benefit, expressed in the form of a single life annuity commencing at the Participant's Normal Retirement Date," "increased by the Equivalent Actuarial Value of the applicable Preserved Spouse's Benefit." Ex. 1 (Part B), at D00280 (§ 1.32). Part B also provided that these employees' Part B accrued benefit, "expressed in the form of an immediate lump sum distribution, shall in no event be less than the present Equivalent Actuarial Value (determined using the Applicable Interest Rate and the Applicable Mortality Table) of the Participant's Minimum Benefit." Ex. 1 (Part B), at D00720 (§ 1.1(c)). In effect, the minimum benefit was the

participant's age-65 annuity benefit under Part A, enhanced by the Free 30% spouse's benefit if applicable. Section 7.3 of the Plan also protected the employee's right to subsidized early retirement benefits to which they were entitled under Part A, provided those benefits were taken in the form of an annuity.

As a consequence of the manner in which opening balances were calculated under Part B, a participant's opening account balance was not always equivalent to the value of the participant's Part A accrued benefit. This is because the opening account balances were discounted to account for the risk of pre-retirement mortality and did not include the value of certain benefits, such as the Social Security supplement. As a result, an employee's opening account balance could be much less than the employee's Part A accrued benefit. Take Ms. Amara, for example. Under Part A, before Part B became effective, she had earned vested retirement benefits of $1,833.65 a month starting at age 55. Therefore, that was her Part A accrued benefit. However, her opening account balance under Part B was $91,124.88, which converts to an approximate age-55 annuity benefit of only $900, less than half her Part A accrued benefit. *See* Ex. 3 (Poulin Declaration), ¶¶ 25-26.

Interest rate fluctuations also affect the relationship between an employee's minimum benefit and her account balance. Recall that within a rate corridor bounded by a minimum and a maximum, the employee bore the risk of interest rate fluctuations. Since the opening account balances were calculated by converting each participant's annuity benefit into a lump sum using a particular interest rate (6.05% or 5.05%), if interest rates

dropped, the employee's minimum benefit could exceed the employee's account balance. That is just what happened at CIGNA. With one exception, interest rates dropped each year after CIGNA converted to a cash balance plan, and that exacerbated the gap between employees' opening account balances and their minimum benefits. The actual historical interest credit rates under Part B are as follows:

Year	Interest Credit Rates
1998	6.05%
1999	4.79%
2000	6.22%
2001	5.95%
2002	4.50%
2003	4.50%
2004	4.50%
2005	4.50%
2006	4.70%

Ex. 10; Ex. 587; Ex. 588. To illustrate this point, assume that an employee aged 40 had earned a $1,000 per month annuity before 1998. That annuity would be converted to an opening account balance of approximately $27,900 using a 6% interest rate, but when interest rates dropped to 4.5%, an account balance of $45,150 would be required to purchase that same $1,000 per month annuity. *See* Ex. 3 (Poulin Decl.), ¶¶ 33-34; Ex. 4 (Supplemental Poulin Declaration), ¶¶ 12-14.

Thus, the design of Part B, plus the drop in interest rates, led to a phenomenon that is known as "wear away" for many, though by no means all, employees. Wear away means that there are periods of time in which the employee's account balance is

less than the employee's minimum benefit. What wear away means in practice is that even though an employee is continuing each year to receive pay and interest credits under Part B, and the employee's account balance may even be growing, it nonetheless remains less than the minimum benefit earned as of December 31, 1997; in effect, where there is wear away, even though the employee continues to work for CIGNA and continues to receive benefit credits, the employee's expected retirement benefits have not grown beyond what the employee was entitled to under Part A as of December 31, 1997. *See, e.g.*, Ex. 40 (2002 memorandum from CIGNA's Vice President for Employee Benefits), at D028635 ("Using the present value of normal retirement age benefits results in a significant 'wear away' period during which time employees accrue no additional benefits with future service.").

And, as this case illustrates, it may take years for some employees' account balances to catch up to the minimum benefit to which the employees were entitled under Part A as of December 31, 1997. Take Ms. Amara again. In her case, even though she was earning pay and interest credits every year, Plaintiff's expert Claude Poulin estimated that "it would take over 10 years for her cash balance account to exceed the value of her previously earned benefits." Ex. 4 (Supp. Poulin Decl.), ¶ 22; *see also* Ex. 3 (Poulin Decl.), ¶¶ 25-27; Ex. 32, at D028174, D028629.

Ms. Broderick and Ms. Glanz also experienced several years of wear away, as Defendants' expert, Lawrence Sher, acknowledged. *See* Ex. 235. According to Plaintiffs' expert, Patricia Flannery experienced nearly six years of wear away, from October 2000 to the present. At the end of 2005, her

account balance converted to an annuity benefit of $756 per month, compared to the annuity of $813 per month she had earned with her service before 1998. *See* Ex. 7; Ex. 156. Plaintiff sought data showing the precise number of employees who actually experienced wear away, but Defendants assert that they do not maintain data that would provide that information. According to Plaintiffs' expert, Mr. Poulin, "the overwhelming majority" of CIGNA's employees experience wear away, with the exception of short-service employees and Tier 2 employees, like Barbara Hogan and Stephen Curlee, who had more than 55 age and service points and therefore benefitted from the 5.05% interest rate used to calculate opening balances. *See* Trial Tr. 218:15 to 219:9; Trial Tr. 219:15 to 220:1; Ex. 4 (Supp. Poulin Decl.), ¶ 28.

Defendants disagree regarding the precise amount of the wear away and the precise number of years for the catch-up period for any given employee; they also characterize that period differently from Plaintiffs. However, there is no doubt, and Defendants' expert conceded this, that wear away is a real phenomenon, that is a consequence of the design of Part B, and that many CIGNA employees experienced it. *See, e.g.*, Ex. 27 (CIGNA's answers to interrogatories No. 8 and 10); Ex. 241 (Hodges Deposition), at 93-103. Thus, both experts essentially agreed that the reasons for wear away were a combination of the following factors: (a) CIGNA's selection of the "greater of A or B" approach rather than the "A plus B" approach; (b) the exclusion of early retirement subsidies from the opening balances; (c) the application of a pre-retirement mortality discount in determining opening balances; and (d) the effect of falling interest

rates after 1997 on the annuities to which the accounts can be converted.

Moreover, as Defendants' own expert acknowledged, wear away is a phenomenon that was well known and understood at the time of CIGNA's adoption of a cash balance plan. Thus, in response to the Court's questions, Mr. Sher admitted that wear away can be anticipated depending upon the design of the cash balance plan and the assumptions a company makes about interest rates:

> The Court: Would it be typical to expect, for a decent sized portion of an employee population, that they might go as long as five or six years before they would actually cross and get into the positive on the conversion?
>
> Mr. Sher: I think you have to, first we have to, look at each individual situation. . . . What are the causes of this phenomenon? . . . I would characterize the early retirement as sort of a byproduct, . . . that what we talked about is a natural thing for the early retirement to have that impact.

Trial Tr. 1008:17-21, 1008:23 to 1009:10.

> The Court: But going into a plan like this, would you expect there to be . . . [a] reasonably significant portion of your employee population who could expect to not add to their minimum benefit for periods of between three and five years?
>
> Mr. Sher: I think it depends. I mean, the early retirement is one factor . . . . One approach is to do this grandfathering which is suggesting that CIGNA did it for a large group of people, not for everyone. So there are some people who are getting that early

retirement, who could have that early retirement wearaway and that could last several years, the early retirement wearaway.

Trial Tr. 1009:23 to 1010:13.

The Court: In 1998, was it predictable and known to CIGNA, because of the various things we talked about – probably not with respect to interest rates so much but the early retirement subsidy sort of bringing that out and the preretirement mortality, in fact people's opening balances . . . would be lower than their minimum protected benefit?

Mr. Sher: I think certainly benefit projections, you know, could have been done to get at your question . . . . The problem is it's hard to disregard [interest rate changes] but yes, absent that, yes.

The Court: Listen, we all have to predict things. Taking normal old regular old interest rate assumptions as you are standing in 1998, you still would have known that the opening balances for some sizeable group of employees, not obviously all, would be less than their protected benefit under the old plan? You would know that because you know mathematically that you are eliminating the early retirement subsidy.

Mr. Sher: Yes.

Trial Tr. 1029:21 to 1030:22.

The Court: [O]ne could . . . have some prediction of whether there was going to be no wearaway; that the wearaway was minimal, you know, two months for most

> employees; or on average, depending upon where you fell in the spectrum, it could be two to three years. That would be some quantity that might prove to be wrong but would have been at least knowable at the time, right?
>
> Mr. Sher: Yes, I think at least my experience, that's often done . . . .

Trial Tr. 1032:19 to 1033:2; *see* Trial Tr. 1019:7-11 (The Court: "So in designing these plans, would it be typical that you or the consultants in the company would try to make some estimates of wearaway for the employee population and then discuss potential mitigative solutions or not?" Mr. Sher: "Yes."); Trial Tr. 1031:11-15 (Mr. Sher: "[P]eople do various kinds of analyses including projections using various assumptions as to what might happen in the future. . . . That's how they design the transition provisions essentially, by looking at the potential impact . . . .").

The Court finds that wear away should have been anticipated by CIGNA, though the precise amount of wear away or duration for any given employee could not be predicted with accuracy. As discussed later, CIGNA was aware that its Plan could result in wear away, although there is no evidence in the record that CIGNA made any estimates of the precise amount of wear away for its employee population. *See* Ex. 81 (Mercer materials, which do not include any calculations of wear away).

CIGNA Announces and Describes Conversion to Employees. In early November 1997, about a year before CIGNA's CEO signed the plan documents for Part B, CIGNA sent a special edition "Signature Benefits Newsletter" (the "1997

Newsletter") to all employees. Ex. 8, Tab 1; Ex 516.[5] It was entitled "Introducing Your New Retirement Program," and it described not only the conversion to the cash balance plan, but also enhancements to CIGNA's Savings and Investment Plus ("SIP"), the 401(k) defined contribution plan.

The 1997 Newsletter informed employees that a new retirement program was going to be introduced effective January 1, 1998:

> On January 1, 1998, CIGNA will introduce a new retirement program. The program includes the new CIGNA Retirement Plan, which replaces the current CIGNA Pension Plan for most employees, plus an enhanced version of Savings and Investment Plus (SIP), our 401(k) plan. Most CIGNA employees will participate in the new CIGNA Retirement Plan, although some long-service employees will remain in the current Pension Plan. . . . If you are moving to the new Retirement Plan, you will continue to earn benefits under the Pension Plan through December 31, 1997, and then transfer to the CIGNA Retirement Plan beginning in 1998.

Ex. 516, at D00607 (emphasis omitted). The 1997 Newsletter stated that employees participating in the new plan would "stop earning benefits under the current Pension Plan on December 31, 1997." *Id.* at D00611. It also informed employees that additional information would be forthcoming in December 1997.

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[5] Ex. 8, Tab 1 and Ex. 516 are identical and therefore for convenience, the Court will cite to Ex. 516.

In an inset box on the 1997 Newsletter's cover, a "Message from CEO Bill Taylor" states: "I am pleased to announce that, on January 1, 1998, CIGNA will significantly enhance its retirement program. . . . These enhancements will make our retirement program highly competitive . . . ." *Id.* at D00607. The 1997 Newsletter tells employees that "the new plan is designed to work well for *both* longer- and shorter-service employees," it provides "steadier benefit growth throughout [the employee's] career," and it "build[s] benefits faster" than the old plan. *Id.* at D00610. On the same page, the 1997 Newsletter tells employees that "[o]ne advantage the company *will not* get from the retirement program changes is cost savings." *Id.* However, an internal expense projection prepared at the time showed that CIGNA anticipated a reduced cost of approximately $10 million by virtue of the conversion from a traditional defined benefit plan to a cash balance plan, though it also expected to incur an additional cost of approximately $10 million by virtue of upgrades to its SIP or 401(k) plan. *See* Ex. 739. The 1997 Newsletter did not discuss or even mention the phenomenon of wear away.

The 1997 Newsletter described how employees would receive an opening account balance and benefit credits:

> The new CIGNA Retirement Plan is an account balance plan – a type of retirement plan that is becoming increasingly popular as a simpler alternative to traditional pension plans. Here's how the new plan will work:
>
> - If you are transferring from the current Pension Plan to the new plan, an account will be set up for you in January.

- If you earned a benefit under the current Pension Plan, the lump sum value of that benefit as of December 31, 1997, will be transferred to your account as your opening balance.
- Beginning in January, your Retirement Plan account will grow through two types of credits:

  - Benefit credits. CIGNA will make a benefit credit to your account for each year in which you work at least 1,000 hours for the company. These credits will range from 3% to 8.5% of your eligible annual earnings, depending on your age, service and earnings.

  - Interest Credits. CIGNA will also credit your account with interest each quarter until you receive your benefit from the plan. The annual interest rate will vary from 4.5% to 9%, depending on recent yields of 5-year Treasury Bonds. This interest rate is consistent with guidelines set by the IRS for account balance retirement plans.

Ex. 516, at D00608 (emphasis omitted). The 1997 Newsletter informed employees that information concerning their account balances was forthcoming:

> CIGNA will begin the process of calculating final pension benefits and Retirement Plan opening balances early in 1998, after all 1997 payroll data are finalized. Benefit calculations are expected to be completed in the spring. Once balances are calculated, they will be credited to Retirement Plan accounts retroactively to January 1, 1998, so

> you won't lose any interest credits for the first part of 1998. You will be informed of your final Pension Plan benefit and Retirement Plan opening balance in your Total Compensation Report, scheduled to be mailed in May 1998.

Id. at D00611 (emphasis omitted).

The 1997 Newsletter also told employees about their options upon leaving CIGNA:

> When you retire or leave CIGNA, you will have the option to receive your vested account balance in one of two ways. You may choose an annuity (monthly payments for life), or you may take your account balance as a single lump sum payment. The lump sum option is new and resembles the SIP payment option. If you prefer, you may roll over your lump sum payment into an individual retirement account (IRA) or your new employer's qualified retirement plan. This provision allows you to assume investment control over your benefit – and defer income taxes on it – until you are ready to use it. You will also have the option to leave your account balance in the Retirement Plan, where it will continue to earn interest credits until you elect to receive your benefit.

Id. at D00608.

In December 1997, CIGNA sent each participant a Retirement Program Information Kit ("Retirement Kit"). Ex. 508. There were four different versions of the Retirement Kit, depending upon whether the participant was being converted to Part B or grandfathered in Part A and whether he or she participated in CIGNA's supplemental pension plan.

Again, the Retirement Kit, like the 1997 Newsletter, explains that the changes were being made to "improve the competitiveness of our benefits program and thus our ability to attract and retain top talent." Ex. 508, at D00724 (emphasis omitted). The Kit states that the changes are "enhancements to the plans," and that CIGNA is not saving any money with the changes, "nor has the new program been designed to save money." *Id.* at D00724- D00725.

The Retirement Kit explained that non-grandfathered employees would cease accruing benefits under Part A as of December 31, 1997, and would automatically become a participant in Part B "on January 1, 1998." *Id.* at D00726, D00718. The Retirement Kit provided greater detail than the Newsletter regarding pay and interest credits, which would be added to employees' hypothetical accounts on a quarterly basis, and payment options. It also told employees that they would receive periodic account statements called "Total Compensation Reports" so they could "keep track of [their] account growth." *Id.* at D00745.

The Retirement Kit also contained detailed information about the calculation of opening balances. However, it did not state that a pre-mortality discount would be applied in calculating the opening balances. CIGNA informed employees as follows:

> **Step 2: Converting Your Final Pension Benefit to an Opening Balance**
>
> Your normal pension benefit is an annual payment made to you for life, beginning when you turn age 65. To convert that annual pension benefit into an opening balance for the new plan, a calculation has to

be made to determine how much that future stream of payments is worth today. This type of calculation is called a present value calculation.

The method used to calculate the present value of a pension benefit is established by law. Basically, the present value of your pension benefit equals the amount of money that someone would need to invest now to have enough money in the future to pay your annual pension benefit. This calculation is made assuming that the "invested" money would earn a moderate rate of interest (about 6.5% per year). Because of the relatively low interest rate, the amount available to you today is relatively large. In fact, to increase your opening balance, CIGNA has selected a much lower interest rate than the 7% or 8% rate adopted by most companies making similar pension plan changes.

Your current age affects the present value of your pension benefit, because the closer you are to retirement age, the less time there is for the lump sum balance to grow, and therefore the more money you need to invest now. Because of this, two people who have earned the same pension benefit at age 65 will have different opening account balances if their ages are different. The older person will have the larger opening balance because there is less time for that person's account balance to grow.

Table 1 shows the factors that will be used to convert final annual pension benefits to opening balances. . . .

Special Conversion Formula for Older, Longer-service Employees

If your age and credited service with CIGNA total 55 or more on January 1, 1998, two special procedures will be used in calculating your opening account balance:

- First, your opening balance will be based on the present value of your age 62 early retirement benefit, rather than on the present value of your age 65 normal retirement benefit. The age 62 benefit has a higher present value than the age 65 benefit.
- Second, a lower interest rate will be used in making the present value calculation (one percentage point less than the standard rule – for instance, 5.5% if the standard rate is 6.5%). The lower interest rate increases the size of your opening balance.

These special procedures have been adopted because most employees in this age and service category will have fewer years to accumulate benefits under the new Retirement Plan. CIGNA wants to ensure that these older, longer-service employees receive fair and adequate benefits at retirement.

Id. at D00719-D00721 (footnote omitted).

Under a heading captioned "How Your Benefit Grows," the Retirement Kit states that "[e]ach dollar's worth of credits is a dollar of retirement benefits payable to you after you are vested." *Id.* at D00740. It also contains examples of how a hypothetical employee's account would grow. The Retirement Kit includes this question: "Will my

benefit be better under the new Retirement Plan?" The answer was as follows:

> The new Retirement Plan is different from the current Pension Plan, so exact comparisons of benefits that cover all possible outcomes are difficult. *Generally speaking, the new Retirement Plan, in comparison with the current Pension Plan, tends to provide larger benefits for shorter-service employees and comparable benefits for longer-service employees*. . . . Of course, other features of the new plan add to your benefit value as well. The lump sum distribution option can be very valuable, since it will allow you to move your benefits into other tax-deferred investments after you retire or leave CIGNA. Also, because the Retirement Plan works like a savings plan, with contributions credited to an account, you should find it easier to understand. You now have two plans that are account-based, enabling you to track your retirement benefits by looking at your statements. *As a result, you will see the growth in your total retirement benefits from CIGNA every year and will be able to update your financial plans accordingly*.

Id. at D00729 (emphasis added); *see also id.* at D00724 ("[B]enefits will grow faster during the early part of your career."). Once again, there is no discussion of wear away. In response to the question, "Why wasn't I allowed to stay in the Pension Plan?," the Retirement Kit told participants who were being moved to the cash balance plan that "[o]ur analysis showed that, in comparison to people with a higher age and service combination, you have

plenty of time to take full advantage of the many attractive features of the Retirement Plan . . . ." *Id.* at D00725. CIGNA did not produce any such analysis in discovery or at trial.

The Retirement Kit also addressed the issue of rehired employees. It noted that they would be placed in Part B. *Id.* at D00739 ("If you are hired or rehired after January 1, 1998, you will become a participant in the Retirement Plan on your date of hire.").

In February 1998, participants received the February 1998 Signature Benefits Newsletter, and in May 1998, participants received an additional newsletter answering frequently asked questions about Part B. *See* Ex. 97; Ex. 180. The February 1998 Newsletter states that employees hired before 1989 with fewer than 45 age and service points "were moved [to Part B] because they have enough time to take advantage of the new Plan provisions. They do not face the problems that those nearer retirement would face if they were suddenly moved out of the pre-1989 Plan." Ex. 97, at SuppD1330.

A June 1998 Newsletter explained how to use the Total Compensation Reports. *See* Ex. 101. Each participant annually received a Total Compensation Report. One CIGNA employee's 1998 Report showed how the opening account balance was calculated:

Your Highest Eligible Average Earnings		$143,478.96
Your Benefit Service Factor	x	01670
Years of Credited Service	x	7.00
Your Age 62 Benefit Before Offset	=	$16,772.69

Your Social Security Offset (see note) plus Early Retirement Reduction	-	$3,859.89
Your Actual Age 62 Annual Benefit	=	$12,912.80
Based on average life expectancy at your age and an interest rate of 5.05% the lump sum actuarial factor is	x	6.0813
Your lump sum benefit – Opening Account Balance		$78,562.55

Ex. 85, at P1801. The Report also stated that "[t]his [initial] balance represents the full value of the benefit you earned for service before 1998 payable to you at age 65. . . . This means that the lump sum growing at this rate of interest to retirement is equivalent to the value of the lifetime annuity payments you have earned." Ex. 98, at P1527 (emphasis omitted).

The Report also notified employees of financial planning and retirement planning tools that CIGNA had made available to employees. All the named Plaintiffs received annual Total Compensation Reports. These annual statements list the opening balance at the beginning of each year, the new pay and interest credits earned, and the closing balance. *See, e.g.*, Ex. 519; Ex. 520.

In October 1998, CIGNA issued the Summary Plan Description ("SPD") for Part B, and a nearly identical version was re-issued in September 1999. Ex. 505 (1998 SPD); Ex. 506 (1999 SPD). The SPD contained information regarding the following topics: eligibility; how breaks in service affect eligibility; how the cash balance account grows, including how

pay and interest credits accrue; when benefits are paid; how benefits are paid; how the benefit is affected by certain "life events"; administrative details concerning the operation of the Plan; minimum benefits; change of control protections; spouse's rights; the appeal process; circumstances under which the Plan can be amended or terminated; and a statement of ERISA rights. *See* Ex. 505 (1998 SPD); Ex. 506 (1999 SPD). It also informed employees that they could obtain a copy of the Plan from the plan administrator, and the Plan was later made available on CIGNA's intranet site. *See* Ex. 524.

As the Retirement Kit stated, the SPD also repeats the following: "Each dollar's worth of credit is a dollar of retirement benefits payable to you after you are vested." Ex. 505 (1998 SPD), at D00828; Ex. 506 (1999 SPD), at D00624 (same). It explained that "[y]our account balance grows in two ways – annual benefit credits and quarterly interest credits. . . . For each year in which you earn a year of credited service, CIGNA will add benefit credits to your account equal to a percentage of your annual eligible earnings. . . . Your account also will grow through interest credits." Ex. 505 (1998 SPD), at D00828-D00829 (emphasis omitted); Ex. 506 (1999 SPD), at D00624 (same). The SPD did not mention or explain wear away, although it did state that participants would never receive less than the minimum benefit:

> If you participated in the Pension Plan before 1998, your old plan benefits were converted to an opening account balance in this Plan. Your final Plan benefits cannot be less than your old plan benefits on December 31, 1997. *If this minimum benefits rule applies to you,*

> *you'll be notified by the Retirement Service Center when you request a distribution.*

Ex. 505 (1998 SPD), at D00838 (original emphasis omitted and emphasis added).

The SPD provides the following information to employees who were rehired by CIGNA, and the SPD was provided in binders for new hires and rehired employees:

> If you were in the old Plan when you left, the pension benefits you earned will be converted to an opening account balance in the this [*sic*] plan when you return. The conversion formula used [to obtain the opening account balance] is based on guidelines established by the federal government for valuing pension benefits. If you have questions about the conversion formula, you may call the CIGNA Retirement Service Center at 1.800.224.4624.

Ex. 505 (1998 SPD), at D00833; *see also* Exs. 509-12.

This Lawsuit. This lawsuit was filed in 2001 by Ms. Amara and others. Judge Dominic Squatrito, who previously presided over this case, certified it as a class action on December 20, 2002, *see* Mem. of Decision [doc. # 61], and additional named Plaintiffs were added on February 15, 2006. *See* Order [doc. # 164]. On March 12, 2007, this Court issued an order complying with the requirements of new Rule 23(c)(1)(B) [doc # 241], and that Order specifies the class, sub-class, and individual claims and defenses. The following discussion seeks to address the class and sub-class issues.

II. Threshold Procedural Issues

Before turning to the parties' substantive arguments, the Court will address two threshold procedural issues raised by CIGNA: The first is whether Plaintiffs' claims are time-barred; the second is whether the named Plaintiffs and thousands of other Class members waived the claims asserted in this case. Neither argument has merit.

A. Statute of Limitations. Plaintiffs brought this lawsuit under section 502 of ERISA, 29 U.S.C. § 1132, which does not contain a limitations period. Where Congress fails to provide a statute of limitations, federal courts apply the statute of limitations that governs the most closely analogous state cause of action. *See Sandberg v. KPMG Peat Marwick, LLP*, 111 F.3d 331, 333 (2d Cir. 1997); *Miles v. N.Y. State Teamsters Conference*, 698 F.2d 593, 598 (2d Cir. 1983); *Chisholm v. United of Omaha Life Ins. Co.*, 514 F. Supp. 2d 318, 324 (D. Conn. 2007). The question in this case is which state cause of action is most closely analogous to ERISA. Plaintiffs argue for Connecticut's six-year statute of limitations for written contracts, Conn. Gen. Stat. § 52-576; CIGNA, on the other hand, contends that Connecticut's 180-day statute of limitations for age discrimination claims, Conn. Gen. Stat. § 46a-82, or its two-year statute of limitations for actions to collect wages or fringe benefits, Conn. Gen. Stat. § 52-596, is more appropriate.

Every decision of the Second Circuit that the Court has found holds that the most closely analogous state statute of limitations for employee benefit claims similar to Plaintiffs' is that for written

contracts.[6] Courts have generally reasoned, and this Court now adopts that reasoning, that even when the claim is that a company's plan does not comply with ERISA's statutory requirements, the focus is on the adequacy and legality of the plan itself, which is a written contract between employers and their employees. In *Miles*, for example, the Second Circuit held that because employee benefit plans are contracts, New York's six-year statute of limitations for causes of action in contract applied to claims under ERISA to determine the employee's eligibility for pension benefits. *See* 698 F.2d at 598; *see also Campanella v. Mason Tenders' Dist. Council Pension Plan*, 299 F. Supp. 2d 274, 280 (S.D.N.Y. 2004), *aff'd* 132 Fed. Appx. 855 (2d Cir. 2005) (applying six-year statute of limitations for claims of statutory violations under ERISA); *Carey v. Int'l Bhd. of Elec. Workers*, 201 F.3d 44, 49 (2d Cir. 1999) ("[W]e affirm the judgment of the District Court that Carey's ERISA claim is barred by the six-year statute of limitation.").[7] District courts in the Second Circuit

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[6] Plaintiffs seek relief on the ground that CIGNA has failed to comply with the statutory standards established by ERISA; they have made no claim of breach of fiduciary duty. CIGNA, for its part, has made no argument that Plaintiffs' claims are equivalent to general tort claims for statute of limitations purposes, and therefore the Court expresses no view on that issue.

[7] Notably, in *Sandberg*, one of the few cases to apply a different statutory period, the court distinguished Mr. Sandberg's claims as "claims that an employer *aborted the vesting or enjoyment of benefits*," 111 F.3d at 334 (emphasis added), not claims that the plan violated ERISA's statutory standards. In such a case, the court held "the most analogous state-law cause of action under section 510 is 'wrongful

have also uniformly held that New York's and Connecticut's statutes of limitations for written contracts govern actions under ERISA. *See, e.g.*, *Cole v. Travelers Ins. Co.*, 208 F. Supp. 2d 248, 252 (D. Conn. 2002) (applying Connecticut's six-year statute of limitations for contract actions); *Venturini v. Metro. Life Ins. Co.*, 55 F. Supp. 2d 119, 120 (D. Conn. 1999) (same); *Manginaro v. Welfare Fund of Local 771, I.A.T.S.E.*, 21 F. Supp. 2d 284, 293 (S.D.N.Y. 1998) (applying New York law).

Indeed, colleagues in this District have expressly rejected both Connecticut's 180-day statute of limitations for age discrimination claims and its two-year statute of limitations for actions to collect on unpaid wages in favor of the six-year limit for written contracts. *See Parsons v. AT&T Pension Benefit Plan*, No. 3:06cv552 (JCH), 2006 WL 3826694, at *2 (D. Conn. Dec. 26, 2006) ("Contrary to *Sandberg*, which involved no claims related to specific benefits, this case deals with determining specific benefits, and thus is about a contract. Hence, the court finds that the most analogous state statute of limitations is six years, for breach of contract claims[, not 180 days, for age discrimination claims]."). As the court explained in *Christensen v. Chesebrough-Pond's, Inc.*, No. 5-92-cv-727(AHN), 1993 U.S. Dist. LEXIS 21278 (D. Conn. Nov. 24, 1993)

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termination' or 'retaliatory discharge,' catch-all descriptions of state-law causes of action encompassing an employee's claim that he was discharged in violation of public policy." *Id.*

> [T]his court remains unpersuaded that it should depart from the considerable weight of authority which holds that ERISA actions to recover unpaid employee welfare benefits should be governed by state statutes of limitations governing contract actions. In addition, this result is consonant with the remedial nature of ERISA, and the liberal construction traditionally given to the Act, a conclusion that other circuits apparently share.

Id. at *16 (citation and quotation marks omitted). This Court agrees.

Finally, several district courts that have recently considered claims similar to Plaintiffs' regarding the conversion of a traditional defined benefit plan to a cash balance plan have held that the six-year statute of limitations period for written contracts applies to such claims. *See Hirt v. Equitable Ret. Plan*, 450 F. Supp. 2d 331, 333-34 (S.D.N.Y. 2006) (applying New York law); *In re Citigroup Pension Plan ERISA Litig.*, 470 F. Supp. 2d 323, 336-37 & n.70 (S.D.N.Y. 2006) ("Defendants argue that the Court should apply a three-year statute of limitations. In arguing for a three-year time limit [rather than New York's six-year limit for written contracts], defendants ignore – without attempting to distinguish – many Second Circuit decisions.") (citation omitted); *In re J.P. Morgan Chase Cash Balance Litig.*, 460 F. Supp. 2d 479, 483 (S.D.N.Y. 2006) ("Employee benefit plans are contracts, accordingly, under New York law, the applicable statute of limitations is six years.").

Not only does CIGNA fail to distinguish any of this case law, it also does not cite even a single case in which a court in this Circuit has applied the

shorter statutes of limitations that CIGNA urges upon the Court. Simply asserting that the reasoning in *Parsons* is "unpersuasive," Defendants' Post-Trial Brief [doc. # 251], at 31 n.23, is insufficient. The only case CIGNA cites for support is *Syed v. Hercules Inc.*, 214 F.3d 155 (3d Cir. 2000), in which the Third Circuit considered which statute of limitations to apply to Mr. Syed's claim for benefits under § 502a(1)(B) of ERISA. At the outset of its analysis, the court noted, "Although this Circuit has not decided which state statute of limitations is applicable to ERISA § 502(a)(1)(B), *every other circuit* to address the issue has applied the statute of limitations for a state contract action." 214 F.3d at 159 (emphasis added) (collecting cases). The Third Circuit chose to apply a contract statute of limitations as well, but Delaware law had two such statutes of limitations. Thus, although the Third Circuit eventually settled on the shorter statute of limitations under the more specific contract provision covering employment disputes, the court nevertheless accepted the premise that a contract statute of limitations is the most closely analogous state statute of limitations. The court also went on to add that it was "inclined to agree with the dissent that the one-year limitations period of § 8111 is not optimal." 214 F.3d at 161. Given the overwhelming weight of authority in the Second Circuit for applying Connecticut's six-year contract statute of limitations, the Court rejects CIGNA's argument for a shorter limit and concludes that Plaintiffs' claims are timely.[8]

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[8] CIGNA also argues that certain claims that Plaintiffs added to the case by way of amendments are untimely because they do

B. Waivers. Several of the named Plaintiffs and many Class members signed written waivers of claims in order to receive severance benefits.[9] The signed waivers defined the released claims as follows:

> "Claims" are any and all claims, demands and causes of action of whatever kind, including any claim for attorney's fees, that you now have, or at any time had, against any Released Persons, but only to the extent they arise out of or relate in any way to your employment or termination of employment with the Company and its affiliates.

Ex. 525, ¶ 5(e). Importantly, the waivers included an exception for "any claims for benefits under any retirement, savings, or other employee benefit programs." *Id. at* ¶ 5(f). CIGNA contends that the exception "only applies to claims for *benefits* under the Plan, not claims alleging statutory ERISA violations," and that Plaintiffs' claims of statutory violations are barred by the release language of the

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not relate back to the filing of the original Complaint. See Defs.' Post-Trial Brief [doc. # 251], at 32 n.25. However, the parties fully briefed this issue at the time Plaintiffs moved to amend, *see* docs. ## 112, 116, 117, 124, and CIGNA raised these very arguments in its papers. The Court permitted the amendments to Plaintiffs' claims, *see* Ruling [doc. # 123], and declines to reconsider that decision here.

[9] According to Plaintiffs, in discovery CIGNA produced approximately 2,000 individual releases; the Class totals more than 27,000 participants. Plaintiffs' Post-Trial Reply Brief [doc. # 254], at 89.

waivers. Defs.' Post-Trial Brief [doc. # 251], at 121. The Court disagrees.

The Court acknowledges at the outset that employees can release claims of statutory ERISA violations in return for severance benefits. "In *Lockheed Corp. v. Spink*, 517 U.S. 882, 894 (1996), the Supreme Court sanctioned the use of early retirement incentives conditioned upon the release of claims and found that conditioning additional benefits on the voluntary waiver of claims against an employer was not prohibited by section 406(a)(1)(D) of ERISA." *De Pace v. Matsushita Elec. Corp. of Am.*, 257 F. Supp. 2d 543, 555 (E.D.N.Y. 2003) (citation and quotation marks omitted); *see also Smart v. Gillette Co. Long-Term Disability Plan*, 887 F. Supp. 383, 385 (D. Mass. 1995) ("Both parties agree that the conditioning of severance benefits on an agreement to waive an ERISA claim is not prohibited by the statute."). Nor need a release expressly mention ERISA in order for a court to conclude that ERISA claims were waived. *See, e.g., Chaplin v. NationsCredit Corp.*, 307 F.3d 368, 373 (5th Cir. 2002) ("Finally, plaintiffs cite no section of ERISA or any caselaw to suggest, much less to require, that, to cover an ERISA claim, a release must specifically mention ERISA.").[10]

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[10] Similarly, in *Fair v. International Flavors & Fragrances, Inc.*, 905 F.2d 1114, 1117 (7th Cir. 1990), the court of appeals noted that the plaintiff's claim could be characterized as arising either under the parties' settlement agreement or under ERISA, but held that even if the claim were considered to arise under ERISA, it was nevertheless barred by the covenant not to sue. *See also Linder v. Byk-Chemie USA, Inc.*, No. 3:02 CV 1956(JGM), 2006 WL 648206, at *9-*10 (D. Conn. Mar. 10, 2006) (comparing case to *Fair* and noting that the court there

However, courts have also uniformly held that the party relying on the waiver bears the burden of proving that the waiver was "an intentional relinquishment or abandonment of a known right or privilege." *Smart*, 887 F. Supp. at 385 (quotation marks omitted); *see also Shaver v. Siemens Corp.*, No. 2:02cv1424, 2007 WL 1006681, at *14 (W.D. Pa. Mar. 29, 2007) ("As previously noted, it is generally recognized that the proponent of a release seeking to assert it as a defense to a cause of action bears the burden of proving the effectiveness of the release."). Further, "the validity of a waiver of pension benefits under ERISA is subject to closer scrutiny than a waiver of general contract claims." *De Pace*, 257 F. Supp. 2d at 555 (alteration and quotation marks omitted). The reason courts have taken this more protective approach in the ERISA context is "'because individuals waiving pension benefits claims are relinquishing rights that ERISA indicates a strong congressional purpose of preserving.'" *Linder v. Byk-Chemie USA, Inc.*, No. 3:02 CV 1956(JGM), 2006 WL 648206, at *6 (D. Conn. Mar. 10, 2006) (alteration omitted) (quoting *Finz v. Schlesinger*, 957 F.2d 78, 81 (2d Cir. 1992)).

When courts have found waivers to bar ERISA claims, the language of the waiver was all-inclusive and unambiguous. In *Linder*, for example, the release stated:

> The Executive hereby fully and forever releases the Company Group from any and

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upheld a waiver of ERISA rights despite the fact that ERISA was not mentioned explicitly in the waiver).

> all claims, causes of action and charges, of whatever kind or nature, whether known or unknown, which he now or hereafter may have against any member of the Company Group, including, but not limited to, claims arising under or in any way connected with his employment with the Company or the termination of such employment.

Id. The *Linder* court found the terms of the release to be clear, and also noted that the plaintiff was already aware at the time he signed the release of the issue for which he eventually sued his former employer. *Id.* at *8. Similarly, in *Smart*, "[t]he language of the agreement explicitly state[d] that Smart waived all claims 'known and unknown.'" 887 F. Supp. at 386. And in *Chaplin*, the court relied on a waiver to bar plaintiffs' ERISA claims because "[t]he terms of the releases unambiguously reveal an intent to cover every imaginable cause of action." 307 F.3d at 372. By contrast, in *Carter v. AT&T Co.*, 870 F. Supp. 1438 (S.D. Ohio 1994), the court sided with the plaintiff, who claimed that the manner in which AT&T calculated her years of service under its pension plan violated the Pregnancy Discrimination Act of 1978. Ms. Carter had signed a general release of claims against the company, but the release "specifically reserve[d] the employee's rights for benefit claims under the pension plan." 870 F. Supp. at 1441. The court held that AT&T's early retirement enhancement system, which credited certain employees with additional years of service but denied full credit for time spent on maternity leave, violated Title VII, and that this was "exactly the exception that was provided for in the release." *Id.* at 1442.

Consistent with the protective approach to ERISA waivers, courts have also looked askance at defendants' attempts to use ambiguous waivers to bar claims employees reasonably thought were preserved under a waiver. For example, in *Thomforde v. IBM Corp.*, 406 F.3d 500, 502 (8th Cir. 2005), Mr. Thomforde signed a waiver that he (and his counsel) believed released all claims except those under the Age Discrimination in Employment Act ("ADEA"). However, IBM argued that Mr. Thomforde had confused the release of claims and the covenant not to sue, and that in fact Mr. Thomforde's substantive claims under the ADEA were also barred. The court refused to accept IBM's position:

> We can easily see how a participant under this Agreement could construe the statement that 'this covenant not to sue does not apply to actions based solely under the ADEA' as an exception to the general release, not just an exception to the covenant not to sue. Given the lack of clarity in the Agreement, and IBM's declination to tell Thomforde what it meant by the language, we hold that the Agreement is not written in a manner calculated to be understood by the intended participants as required by the [Older Workers Benefits Protection Act].

Id. at 504 (alterations omitted). Similarly, in *Carrabba v. Randalls Food Markets, Inc.*, 145 F. Supp. 2d 763, 771 (N.D. Tex. 2000), plaintiffs sued for payments they claimed were owed under a previous pension plan offered by the company, which had been terminated "long before the execution of any of the releases" that defendant argued barred

their claims. The court refused to enforce the waivers with respect to those claims, noting that

> [t]he indication from the evidence is that neither party to the waiver/release documents gave any thought to the [prior pension plan] or any claims arising under [that plan] when the documents were drawn, signed, and delivered. There is certainly no basis in the evidence for any finding that any signatory on such a release/waiver document intended by execution and delivery of the document to release defendant of any claim that is being asserted in this action.

Id. at 772.

Examining the language of CIGNA's waivers, the initial release language is broad, though not so all-encompassing as some of the releases in the cases noted above. However, the CIGNA release contains an explicit exception for claims under CIGNA's retirement programs, and the Court finds no indication that either party, much less both, intended to draw the kind of fine distinctions CIGNA now argues the Court should read into the exception. CIGNA points to no language, either in the waivers themselves or in the SPD for the Severance Pay Plan,[11] that suggests, let alone explicitly states, that the exception covers only claims for benefits under

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[11] The SPD for the Severance Pay Plan states, "You will release CIGNA companies, and their officers, directors, employees and agents, from any liabilities arising out of, or related to, your employment and termination of employment (of course, your rights arising under other benefit plans on or after your termination of employment date will be preserved)." Ex. 213, at P2307 (emphasis omitted).

the terms of the Plan, and not claims under ERISA itself. Although CIGNA cites to three decisions in the Second Circuit that have distinguished between claims for benefits and statutory ERISA violations, none of those cases considered the distinction in the context of a release of ERISA claims. *See Campanella*, 299 F. Supp. 2d at 280, 281 (exhaustion context); *De Pace*, 257 F. Supp. 2d at 558 (same); *Gray v. Briggs*, No. 97 CIV. 6252(DLC), 1998 WL 386177, at *7 (S.D.N.Y. July 7, 1998) (same).

CIGNA drafted the release language and certainly could have limited the exception to claims for benefits under the Plan only, and not under ERISA.[12] CIGNA did not do so, and the Court will not rewrite the release for CIGNA at this stage. Accordingly, the Court concludes that CIGNA, which has the burden of proof on this issue, has failed to demonstrate under any standard, much less the "closer scrutiny" applicable in the ERISA context, *see*

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12 As Plaintiffs note, CIGNA amended the exception clause in 2004 to cover "any claims for benefits payments to which the Plan Administrator determines you are entitled under the terms of any retirement, savings, or other employee benefit programs in which the Company participates (but your Release does cover any claims you may make for severance benefits beyond those described or referred to in this Agreement and any claims for benefits beyond those provided under the terms of the applicable plan)." Ex. 214, at SuppD4287-SuppD4288 (¶ 5(f)(2)). Although this change is not dispositive of the issue presented, it at least suggests that the original language was sufficiently ambiguous that employees might not have understood that CIGNA intended to preserve only claims for benefits under the terms of the Plan. In any event, the change shows that CIGNA knew how to limit the exception clause if it wished to do so.

De Pace, 257 F. Supp. 2d at 555, that the waivers signed by CIGNA employees intentionally relinquished or abandoned the claims Plaintiffs assert here. *See Smart*, 887 F. Supp. at 385.[13]

III. Age Discrimination

One of Plaintiffs' principal contentions in this case is that CIGNA's cash balance plan discriminates against workers on the basis of age. Section 204(b)(1)(H) of ERISA prohibits a defined benefit plan under which "an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age." 29 U.S.C. § 1054(b)(1)(H)(i); *see also* 26 U.S.C. § 411(b)(1)(H)(i) (similar Internal Revenue Code provision). The statutory provisions do not define "benefit accrual," "rate of . . . benefit accrual" or "because of the attainment of any age." The Treasury Department proposed regulations to define those terms, but withdrew its proposals in the expectation of congressional amendments, which were not enacted at the time CIGNA adopted its cash balance plan.[14] That legislative and administrative

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[13] In light of this determination, the Court need not consider, and does not decide, whether CIGNA's solicitation of releases after this action was filed would violate the rules against communication with absent Class members during the pendency of a lawsuit.

[14] In 2006, Congress passed section 701(a)(1) of the PPA, which significantly modified the application of the age discrimination provisions to cash balance plans and recognized that cash balance plans are not age discriminatory with respect to benefits earned on or after June 29, 2005. The PPA is not retroactive. Moreover, section 701(d) states that nothing in the amendments "shall be construed to create an inference" with respect to ERISA's age discrimination provision,

vacuum has led to considerable litigation in the courts over the meaning of those phrases.

In brief, CIGNA – through its expert Lawrence Sher – contends that so long as the rate at which employees accrue interest and pay credits does not discriminate on the basis of age, the Plan does not violate the prohibitions on age discrimination. As Mr. Sher points out, under CIGNA's Plan, older and longer-serving employees accrue pay credits at the same or higher rates than younger or shorter-serving employees. This is because pay credits in the CIGNA Plan are age- and service-favored; interest rate credits are the same regardless of age or service. Furthermore, the calculation of opening balances favored older employees by using a more favorable conversion rate for participants whose age and service totaled 55 or greater.

Plaintiffs, on the other hand, contend that in determining the "rate of benefit accrual," courts must focus not on the annual accruals – or inputs – but rather on the benefits that are payable upon normal retirement – the outputs. Through their expert Claude Poulin, Plaintiffs assert that a younger worker who has the same service record and same compensation as a similarly-situated older worker will at normal retirement receive a greater annuity than the similarly-situated older worker. This is because the younger worker has more years to normal retirement and therefore more years to

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[Footnote continued from previous page]

§ 1054(b)(1)(H), "as in effect before such amendments." *See Register*, 477 F.3d at 65 n.8.

accumulate benefit credits and reap the financial advantages of the phenomenon of compound interest.

Since this litigation was filed, numerous courts have addressed the precise issue presented in this case. Two divergent positions have emerged. At the risk of over-simplification, one school of thought – exemplified by a decision of the Court's colleague Judge Janet C. Hall – concludes, after an assessment of the statutory text and legislative history, that the phrase "rate of benefit accrual" in the age discrimination provision should be equated with the term "accrued benefit," which is defined in ERISA and means the annual benefit commencing at normal retirement age. *See Richards v. FleetBoston Fin. Corp.*, 427 F. Supp. 2d 150, 157-62 (D. Conn. 2006). According to this line of reasoning, since younger employees will receive an annual benefit payable at normal retirement age greater than the benefit that an older, similarly-situated worker would receive, cash balance plans (or at least plans like CIGNA's) violate the age discrimination prohibitions. Other courts have embraced Judge Hall's analysis. *See, e.g., In re Citigroup*, 470 F. Supp. 2d 323; *In re J.P. Morgan Chase*, 460 F. Supp. 2d 479.

Judge Frank Easterbrook of the Seventh Circuit took a contrary view in *Cooper v. IBM Personal Pension Plan*, 457 F.3d 636 (7th Cir. 2006). *Cooper* held that when Congress used the phrases "rate of benefit accrual" and "accrued benefit" in ERISA, Congress meant different things; otherwise, according to ordinary canons of construction, Congress would not have used different phrases. According to *Cooper*, "rate of benefit accrual" refers to the rate of the employer's contributions to the plan (which in CIGNA's case is always greater for older employees than younger, similarly-situated

employees), rather than to the increase due to compounding interest in a participant's accrued normal retirement benefit. As Judge Easterbrook put it, Plaintiffs' argument "treats the time value of money as age discrimination . . . [and] [t]reating the time value of money as a form of discrimination is not sensible." *Id.* at 638-39. Furthermore, Judge Easterbrook explains, Plaintiffs' approach adds to the younger and older workers' accounts all of the interest earned until age 65, but then neglects to discount that resulting sum to present value for purposes of comparison. When an appropriate discount rate is used, the apparent excess earned by the younger worker (through the magic of compound interest) disappears.

The two circuit courts to address this issue since *Cooper* have agreed with Judge Easterbrook and found cash balance plans not to be age discriminatory. *See Drutis v. Rand McNally & Co.*, 499 F.3d 608 (6th Cir. 2007); *Register v. PNC Fin. Servs. Group., Inc.*, 477 F.3d 56 (3d Cir. 2007). Many other district courts have also embraced *Cooper*'s reasoning. *See, e.g.*, *Custer v. S. New Eng. Tel. Co.*, No. 3:05cv1444 (SRU), 2008 WL 222558 (D. Conn. Jan. 25, 2008); *Tomlinson v. El Paso Corp.*, No. 04-cv-02686-WDM-MEH, 2007 WL 891378 (D. Colo. Mar. 22, 2007); *Sunder v. U.S. Bank Pension Plan*, No. 4:05CV01153 ERW, 2007 WL 541595 (E.D. Mo. Feb. 16, 2007); *Finley v. Dun & Bradstreet Corp.*, 471 F. Supp. 2d 485 (D.N.J. 2007); *Tootle v. ARINC, Inc.*, 222 F.R.D. 88 (D. Md. 2004); *Eaton v. Onan Corp.*, 117 F. Supp. 2d 812 (S.D. Ind. 2000).

The Second Circuit has not yet had the opportunity to consider this issue. However, that court currently has before it two cases that will afford the circuit an opportunity to decide the

question presented by this case. In *Hirt*, 441 F. Supp. 2d 516, *appeal docketed*, No. 06-4757cv (2d Cir. Oct. 13, 2006), District Judge Alvin Hellerstein held that PNC's cash balance plan was not age discriminatory. Similarly, in *Bryerton v. Verizon Communications Inc.*, No. 06 Civ. 6672(DC), 2007 WL 1120290 (S.D.N.Y. Apr. 17, 2007), *appeal docketed*, No. 07-1680cv (2d Cir. Apr. 23, 2007), Judge Denny Chin followed *Hirt*. *Accord Custer*, 2008 WL 222558; *Laurent v. PriceWaterhouseCoopers LLP*, 448 F. Supp. 2d 537 (S.D.N.Y. 2006). *Hirt* and *Bryerton* have been briefed but not yet argued before the Second Circuit.

Given the fact that *Hirt* and *Bryerton* are before the Second Circuit and that the courts that have considered this issue have already thoroughly discussed the arguments on each side of the question, the Court will not repeat those arguments at length in this decision. Counsel for both parties agreed that there were no material differences between CIGNA's Plan and the plans that were considered in the previously cited decisions. Suffice it to say that after careful consideration, this Court adopts the position of the Third, Sixth, and Seventh Circuits, as well as that of the district courts in *Hirt* and *Bryerton*.

In this Court's view, CIGNA's cash balance plan is not age discriminatory. To the contrary, the CIGNA Plan provides greater annual benefits to older workers who are similarly situated to younger workers. Thus, this Court agrees with Judge Chin, who recently summarized the reasons why a cash balance plan like CIGNA's is not age discriminatory:

> First, the terms of the Plan are not only age neutral, but actually provide pay credits at a

rate that is more generous for older employees than for younger employees. Interest credits are calculated at an identical rate for all employees. Thus, the fact that a younger employee's pay credits are eventually worth more than those paid to an older employee (with a comparable salary and similar number of years of service) results not from discrimination, but from the fact that the younger employee has had more time to accumulate interest (as it will take more years for the younger employee to reach age 65). In other words, the discrepancy results from the time value of money.

As the *Cooper* court explained, "[n]othing in the language or background of § 204(b)(1)(H)(i) suggests that Congress set out to legislate against the fact that younger workers have (statistically) more time left before retirement, and thus a greater opportunity to earn interest on each year's retirement savings. Treating the time value of money as a form of discrimination is not sensible."

Second, plaintiffs' position is based on their repeated assertion that "benefit accrual" and "accrued benefit" are equivalent. There is, however, simply no indication that Congress meant for the two terms to be used interchangeably. Congress easily could have used the same terminology, but it did not. Indeed, I agree with Judge Easterbrook's interpretation that the phrase "benefit accrual" in § 204(b)(1)(H)(i) "reads most naturally as a reference to what the employer

> puts in . . . while the defined phrase 'accrued benefit' refers to outputs after compounding."
>
> . . .
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> Third, a comparison of the parallel anti-discrimination provisions for defined benefit and defined contribution plans reinforces this reading of the text. According to § 204(b)(2)(A), "[a] defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age." This provision is nearly identical with the anti-discrimination provision for defined benefit plans, with the exception that the provision for defined benefit plans states what is prohibited, while the provision for defined contribution plans states what works. . . . [I]t would make little sense for Congress to allow for the accumulation of interest for defined contribution plans, but prohibit it for defined benefit plans.

Bryerton, 2007 WL 1120290, at *4-*5 (citations omitted).

Furthermore, as Judge Easterbrook pointed out in *Cooper* and as Plaintiffs' expert Mr. Poulin acknowledged, *see* Trial Tr. 266-67, when one discounts the younger worker's benefits to present value, any difference between the older worker and younger worker's annuity disappears. That is, one cannot compare what an older worker will receive as an annuity in 2015 to the annuity that a younger worker will receive in 2030. Not surprisingly, those

figures will always be different and the younger worker's annuity will always look greater. That is what Mr. Poulin did in his report. But that differential is because of interest, not age discrimination. As Mr. Sher properly explains, *see* Ex. 10 (Sher Report), at 17; Trial Tr. 1147-49, to make any meaningful comparison, one needs to discount the younger worker's annuity to 2015 (or inflate the older worker's to 2030) and when that is done, the differential caused by compound interest disappears.

One final argument bears mention. In addition to what might be called the traditional age discrimination argument, Plaintiffs claim that CIGNA's Plan discriminates against older employees because, they say, wear away affects older employees more than younger employees – older participants have longer wear away periods under the CIGNA Plan according to Plaintiffs. If that were true, Plaintiffs might well have a good age discrimination claim. But the Court finds that there is simply no evidence to support Plaintiffs' assertion, and much of the evidence refutes it.

Plaintiffs rely heavily upon the fact that wear away is affected by the elimination of subsidized early retirement benefits in calculating the opening balance and that early retirement eligibility is a function of age. But as the experts testified, wear away results from a variety of factors, and in this case it was principally driven by the fall in interest rates, which affects all employees equally. *See Custer*, 2008 WL 222558, at *10 ("The 'wear-away' period is not necessarily longer for older workers; it is longer for workers that have greater frozen benefits. Under the old plan, the size of a worker's frozen benefits is a function of a worker's salary and

years of service, not his age."). Furthermore, Plaintiffs' expert acknowledged that the mortality discount used in calculating the minimum benefit always is greater for younger participants than for similarly-situated older participants. Indeed, Plaintiff's expert conceded that he had never actually analyzed the lengths of wear away periods for older and younger participants, or even the demographics of the participants in the Plan, though in his defense Plaintiffs complain that CIGNA failed to produce during discovery the data necessary to conduct such an analysis.[15] However, if CIGNA's Plan did structurally disfavor older employees in terms of wear away, the Court does not understand why Mr. Poulin could not have shown it; he seemed to have little difficulty seeking to show other alleged adverse impacts from the structure of the CIGNA Plan.

Finally and importantly, the Court agrees with CIGNA that what Plaintiffs see as age discrimination is merely the transition from one plan that was heavily age-favored to another plan that is still age-favored but less so. In the Court's view, that transition is not age discrimination. *See Cooper*, 457 F.3d at 642 ("But removing a feature that gave extra benefits to the old differs from discriminating

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[15] CIGNA maintains that it did not calculate the length of wear away periods for any employees, and that there was, as a result, no such data to produce to Plaintiffs. *See* Defendants' Responses to the Court's January 25, 2008 Questions [doc. #267], at 13. Further, CIGNA persuasively argues that no actual participant data would have been required in order to analyze whether the length of wear away periods was discriminatory on the basis of age. *Id.* at 14. Accordingly, the Court will not draw an adverse inference against CIGNA, as Plaintiffs request.

against them. Replacing a plan that discriminates against the young with one that is age-neutral does not discriminate against the old.").

IV. Anti-Backloading and Non-Forfeiture Rules

A. Anti-Backloading Rules. Section 204 of ERISA addresses "backloading," or the practice by which employers seek to postpone the crediting of the bulk of retirement benefits to their employees' pensions until late in the employees' careers. *See* 29 U.S.C. § 1054(a)-(b)(1). Backloading does not merely postpone the time at which employers must make contributions to the employees' accounts; it also benefits the employer because only employees who remain at the company until retirement reap relatively large retirement benefits. As the Second Circuit explained in *Langman v. Laub*, 328 F.3d 68 (2d Cir. 2003), "'The primary purpose of [minimum accrual rates] is to prevent attempts to defeat the objectives of the minimum vesting provisions by providing undue 'backloading,' i.e., by providing inordinately low rates of accrual in the employee's early years of service when he is most likely to leave the firm and by concentrating the accrual of benefits in the employee's later years of service when he is most likely to remain with the firm until retirement.'" *Id.* at 71 (alteration in original) (quoting H.R. Rep. No. 93-807 (1974)).

The anti-backloading provisions of ERISA require employers to satisfy one of three possible tests, all aimed at ensuring a steady accumulation of retirement benefits over the course of an employee's career. The parties agree that the applicable test in this case is the so-called 133-1/3% rule, rather than the 3% rule or the fractional accrual rule, because

benefits under CIGNA's cash balance plan are calculated using a career pay history. *See* 29 U.S.C. § 1054(b)(1). The other two rules apply to plans that, unlike the CIGNA Plan, base their benefit calculations on final or highest average pay. *See* 29 U.S.C. § 1054(b)(1)(A), (C).

It is apparent from the statutory text that the 133-1/3% rule is prospective, in that an employer must demonstrate each year that the plan will comply with the rule in all future years; benefit accruals in previous years are not taken into consideration. *See* IRS Revenue Ruling 2008-7. A defined benefit plan satisfies the requirements of the 133-1/3% rule if under the plan

> the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133 1/3 percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year.

29 U.S.C. § 1054(b)(1)(B); *see also* 26 C.F.R. § 1.411(b)-1(b)(2). Thus, the rate of benefit accrual in any given year may not exceed the rate of benefit accrual in any prior year by more than 133-1/3%. The corollary of this requirement is that each year's accrual must be no less than 75% of any later year's accrual.

There are important limitations or restrictions in making the calculations required to demonstrate compliance with the rule. For one, the 133-1/3% rule

is to be examined without consideration of any prior formulas or prior plans. Thus, the rule provides that "any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years." 29 U.S.C. § 1054(b)(1)(B)(i). Furthermore, "the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded." 29 U.S.C. § 1054(b)(1)(B)(iii). In light of this provision, Plaintiffs conceded at oral argument that wear away due solely to the exclusion of early retirement benefits from the protected minimum benefit should not be considered in determining compliance with the 133-1/3% rule. In addition to the exclusion of early retirement benefits from the calculations under the 133-1/3% rule, ERISA also provides that "social security benefits and *all other relevant factors* used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year." 29 U.S.C. § 1054(b)(1)(B)(iv) (emphasis added). These factors include the applicable consumer price index, for example. *See* 26 C.F.R. § 1.411(b)-1(b)(2)(D).

Plaintiffs make two arguments under the 133-1/3% rule. Their principal argument is that Part B violates the rule because there are no benefit accruals during wear away periods, as benefits under Part B will not be paid to an employee with a protected minimum benefit under Part A unless and until the employee's cash balance account exceeds the protected minimum benefit. The second claim does not rely on the phenomenon of wear away; rather, Plaintiffs argue that Part B violates the 133-1/3% rule structurally because of the use of variable interest rates. Neither of these arguments is persuasive.

Regarding wear away, the evidence showed that there were many CIGNA employees who experienced this phenomenon, including named Class representatives. During the wear away period, Plaintiffs argue, the rate of benefit accrual is zero. Thus, any later accrual, once the cash balance account exceeds the protected minimum benefit, must necessarily be more than 133-1/3% of the (non-existent) accrual during wear away. CIGNA points out that Plaintiffs' argument is dependent upon comparing the minimum vested benefit under CIGNA's prior plan with the accrued benefits under CIGNA's new plan, and argues that such a comparison between the two plans is not permissible under 29 U.S.C. § 1054(b)(1)(B)(i). In response, Plaintiffs invoke the so-called "aggregation rule," under which

> [a] defined benefit plan may provide that accrued benefits for participants are determined under more than one plan formula. In such a case, the accrued benefits under all such formulas must be aggregated in order to determine whether or not the accrued benefits under the plan for participants satisfy one of the alternative methods [i.e., one of the three anti-backloading tests].

26 C.F.R. § 1.411(b)-1(a). Plaintiffs assert that the aggregation rule should apply to Part B because "more than one plan formula" is involved in calculating the benefit accruals of employees who have a protected minimum benefit under Part A. Plaintiffs' claim is that although benefit accruals under Part A were frozen before Part B was introduced, Part B is still sufficiently dependent on Part A that the two plans can both be said to

determine participants' accrued benefits within the meaning of the aggregation rule.

The Court disagrees with Plaintiffs. It is true that a participant's right to be paid her vested benefits from a prior version of the Plan may indirectly affect the accrual calculation under the new version of the Plan during the wear away period. However, the Court does not consider the mere comparison of benefits under Part A and Part B to constitute sufficient use of the terms of Part A to qualify for the application of the aggregation rule. The potential overlap of the two versions of CIGNA's Plan, referred to here as a wear away period, is essentially an artifact of the transition from a defined benefit plan to a cash balance plan; it is not a backloading issue.[16] Even Plaintiffs' expert, Mr. Poulin, admitted that if CIGNA had originally implemented a cash balance plan, rather than a defined benefit plan, there would have been no wear away for any employees, *see* Trial Tr. 409:15 to 410:16, and so no possibility of a backloading claim based on that wear away. Assuming that Part B is not itself violative of the 133-1/3% rule, then, Part B

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16 Plaintiffs point for support to Example 3 in 26 C.F.R. § 1.411(b)-1(b)(2)(B)(iii), which states that a plan that provides for accruals of 2% of salary for the first five years, 1% of salary for the second five years, and then 1.5% of salary for each year thereafter fails the 133-1/3% test, despite the fact that the average of the accumulations would not violate the test. The Court does not find this example persuasive, because the change in accumulation rates that Plaintiffs rely on in the case of CIGNA's Plan is not the result of a specific plan provision, but rather is due to the shift from Part A to Part B. As discussed above, under the amendment rule Part B is considered always to have been in effect.

does not impermissibly backload CIGNA employees' benefits.

The Court finds further support for its decision in the fact that all other courts to have considered whether a transition from a defined benefit plan to a cash balance plan under a "greater of A or B" approach like CIGNA's falls under the aggregation rule, have held that it does not. As the Third Circuit noted in *Register*, 477 F.3d 56, Plaintiffs' "argument fails . . . because it cannot surmount the barrier that the [aggregation rule] they cite does not apply in cases of plan amendments. Rather, it applies in cases where there are *two co-existing formulas under a single plan*." *Id.* at 71-72 (emphasis added). Judge Hall also recently dismissed an almost identical argument under the aggregation rule in *Richards*, 427 F. Supp. 2d at 171, on the ground that under 29 U.S.C. § 1054(b)(1)(B)(i),

> the Amended Plan is treated as having been in effect for all plan years, [and so] employees such as Richards would never have accrued a benefit under the Traditional Plan, and would have started accruing benefits under the cash balance formula from the start of their employment. Assuming such a scenario, such employees would suffer no backloading of benefits.

See also Custer, 2008 WL 222558, at *12-*13 (applying amendment, rather than aggregation, rule in the case of a cash balance transition employing the "greater of A or B" model); *Finley*, 471 F. Supp. 2d at 494-95 (same); *Allen v. Honeywell Ret. Earnings Plan*, 382 F. Supp. 2d 1139, 1160 (D. Ariz. 2005) ("Thus, in determining whether a new benefit formula violates the 133 1/3 percent rule, one does

not compare the new formula with the old formula; rather, the backloading question must be answered by considering the new formula on a stand-alone basis."). Although Plaintiffs attempt to distinguish this line of cases, they cite to no opinion in which the court applied the aggregation rule, rather than the amendment rule, to a similar conversion from a traditional defined benefit plan to a cash balance plan.

The Court's conclusion also sensibly conforms to the policy concerns motivating the anti-backloading rules. Those rules were intended to ensure the steady accumulation of retirement benefits and to protect employees' interests.[17] Assuming that the "greater of A or B" formula was intended to, and did in fact, guarantee that CIGNA employees who had accrued benefits under Part A received the larger of those benefits or the new benefits they accrued under Part B, the Plan furthered, rather than frustrated, the goals of the 133-1/3% rule. This fact reinforces the Court's conviction that the backstop provided by the protected minimum benefit is simply a form of grandfathering to assure an orderly and sensible transition between plans, and not impermissible back-loading.[18] *See Register*, 477 F.3d at 72

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[17] Thus, the Court rejects Plaintiffs' narrow interpretation of the purpose of the aggregation rule, which they claim is limited to a scenario in which an employer seeks to provide an across-the-board increase in benefits to employees of a magnitude that would otherwise violate the 133-1/3% rule. *See* Pls.' Post-Trial Brief [doc. # 247], at 21.

[18] Although not binding, a recent IRS Revenue Ruling came to the same conclusion with respect to plans such as CIGNA's, which preserve benefits already accrued under the pre-conversion formula in the form of a guaranteed minimum

("Moreover, the objective of the anti-backloading provisions, to prevent a plan from being unfairly weighted against shorter-term employees, simply is not implicated by the PNC conversion [to a cash balance plan].") (quotation marks and citation omitted).

Plaintiffs also argue that apart from the issue of wear away, there is a structural flaw in CIGNA's Plan that violates the 133-1/3% rule. Part B uses a fixed scale of pay credits that ranges from 3-7% of pay under the Social Security integration level. As 7% is more than 133-1/3% of 3%, the only way that Part B can satisfy the 133-1/3% rule is if the interest credits added to the pay credits "smooth out" the overall accumulation of retirement benefits. This smoothing occurs because the younger employees, having more time until retirement, receive more interest credits than similarly-situated older employees, helping to offset the greater pay credit percentages for the latter group. Under Part B, interest credits, unlike pay credits, are not set in advance; rather, they are based on an interest rate that is variable within a certain range. Plaintiffs

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benefit. *See* IRS Rev. Rul. 2008-7, at 12 ("Ordinarily, a period of zero annual rate of accrual followed by a period of positive annual rates of accrual would result in a plan failing to satisfy the 133 1/3% rule. However, because there is no ongoing accrual under the pre-conversion formula for these participants for service after the January 1, 2002 effective date of the conversion amendment, the lump sum-based benefit formula is the only formula under the plan . . . and, pursuant to the special rule of § 411(b)(1)(B)(i), that formula is treated as if it were in effect for all other plan years.").

argue that fluctuating interest rates may cause the accrual of the normal retirement benefit to vary in ways that would violate the 133-1/3% rule. This is because each year's interest rate is used to project the value of the cash balance account to normal retirement age and so to estimate an employee's age-65 annuity (the "normal retirement benefit" for defined benefit plans). Even seemingly small changes in interest rates from year to year may result in large fluctuations in the accumulation of the normal retirement benefit as a result of the projection of those current benefits potentially decades into the future.

This argument, too, fails under the plain language of the relevant statutory section. ERISA states that "social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year." 29 U.S.C. § 1054(b)(1)(B)(iv); *see also* 26 C.F.R. § 1.411(b)-1(b)(2)(D). Thus, CIGNA could permissibly hold constant, as it did, the interest rate used to calculate the accumulation of future benefits in determining compliance with the anti-backloading rules. *See Wheeler v. Boeing Co.*, No. 06-cv-500- DRH, 2007 WL 781908, at *3 (S.D. Ill. Mar. 13, 2007) ("Plaintiffs . . . argue that the 'real-world' effect of the Plan's use of a variable interest rate (the annual rate on 30-year Treasury securities) to compute 'Interest Credits' creates a situation in which variations in the 30-year Treasury rate are likely to cause backloading. This argument is simply wrong. The Plan clearly is a 'frontloaded' – not backloaded – cash balance plan within the meaning of applicable Treasury regulations. As noted, 26 C.F.R. § 1.411(b)-1 states plainly that factors used to compute benefits will be

assumed to be constant even when a plan uses a variable outside index like the Consumer Price Index ("CPI") to compute such benefits."). Further, assuming that future years' benefits do not accrue at a rate that exceeds 133-1/3 % of the rate for the base year in question, the fact that the base year's rate of accrual may exceed that of a prior year by more than 133-1/3% due to real-world fluctuations in interest rates does not violate the rule.[19] Plaintiffs have not claimed, or provided any evidence to suggest, that if one holds constant any interest rate in CIGNA's permissible window of 4.5-9% for all future Plan years, the rate of future benefit accrual would violate the 133-1/3% rule.

Furthermore, under Part B, employees could only benefit from the variability of interest rates – they will never earn less than 75% of any future year's accrual in a given year, assuming that the minimum interest rate applies, and they may earn more if they retire in a year in which the variable interest rate happens to be higher than the minimum guaranteed rate.[20] The court in *Wheeler*,

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[19] Again, although not binding, Revenue Ruling 2008-7 supports this interpretation of the statute and regulations. *See* IRS Rev. Rul. 2008-7, at 10-12 (holding interest rate and conversion factor for future years constant in application of 133-1/3% rule, and applying the rule only prospectively), 18-19 (noting that if the applicable interest rate in a future year, held constant, results in an accrual pattern that violates the rule on a going-forward basis, the plan would need to be amended to bring it into compliance).

[20] Defendants also note that this uncertainty regarding the exact value of the age-65 annuity is inevitable when a variable interest rate is used, as it is impossible definitively to determine the value of the annuity without knowing the

2007 WL 781908, at *5, noted the "gotcha!" quality of Plaintiffs' argument,

> which seeks to trip up the Plan on the basis of swings in the 30-year Treasury rate. The Court sees no compelling interest in playing such games, or in forcing Boeing to alter Plan provisions that obviously are intended to benefit Plan participants. As discussed, the Plan provides a minimum 5.25% floor for computing "Interest Credits," but the variable rate enables participants to do better than 5.25% in Plan years when the applicable 30-year Treasury rate exceeds the 5.25% floor.

Id. at *5. Thus, the Court holds that the 133-1/3% rule is not violated by the use of a variable interest rate, provided that no interest rate in the 4.5-9% window, held constant, results in impermissible backloading. Although the Court is sympathetic to Plaintiffs' concerns regarding wear away, and will discuss that issue in greater detail elsewhere in this opinion, the Court finds that Part B does not violate ERISA's prohibition on backloading.

B. Non-forfeitable Benefits. As part of its efforts to protect employees and their retirement benefits, ERISA prohibits the forfeiture of accrued

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market-based interest rate that will apply in the year of the employee's retirement. Prior to that point, only estimates are available, based on each year's rate. Defendants point to 29 U.S.C. § 1054(b)(1)(B)(iv) as an indication that Congress did not intend that all such variable interest rate plans be forbidden as failing to satisfy the 133-1/3% rule.

benefits except under limited circumstances that do not apply to this case. *See* 29 U.S.C. § 1053(a)(3). Section 203(a) of ERISA states emphatically, "Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age . . . ." 29 U.S.C. § 1053 (a). A defined benefit plan "satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions." *Id.* § 1053(a)(2)(A)(ii). Elsewhere, ERISA defines "nonforfeitable" as "a claim obtained by a participant or his beneficiary to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan." 29 U.S.C. § 1002(19).

Plaintiffs argue that Part B works an impermissible forfeiture for two reasons. First, Article VII of Part B gives CIGNA employees the option of receiving their retirement benefits as either an annuity or a lump sum. *See* Ex. 1 (Part B), at D00305-D00307 (Art. VII). However, as Section 7.3 makes clear, a prior Part A participant's vested early retirement benefits are available only if the employee chooses an annuity. *See id.* at D00309 (§ 7.3). Thus, Plaintiffs claim that an employee choosing a lump sum forfeits any early retirement benefits for which she otherwise qualified. Second, even disregarding early retirement benefits, Plaintiffs argue that in establishing a "greater of A or B" formula, CIGNA has required its employees to forfeit either the cash balance accruals, if they choose an annuity, or the protected minimum

benefit, if they choose a lump sum. For the reasons that follow, the Court rejects each argument.

Despite ERISA's requirement that benefits be non-forfeitable, employers have substantial leeway in deciding how to define the non-forfeitable benefit. As the Supreme Court explained in *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981),

> the statutory definition of "non-forfeitable" assures that an employee's claim to the protected benefit is legally enforceable, but it does not guarantee a particular amount or a method for calculating the benefit. As we explained last Term, "it is the claim to the benefit, rather than the benefit itself, that must be 'unconditional' and 'legally enforceable against the plan.'"

Id. at 512 (quoting *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 466 U.S. 359, 371 (1980)). In *Alessi*, an employer sought to offset the pension benefits of its employees by the value of any workers' compensation benefits for which those employees were eligible. The Supreme Court held that such offsets did not work an impermissible forfeiture of benefits under ERISA. According to the Supreme Court, "It is particularly pertinent for our purposes that Congress did not prohibit 'integration,' a calculation practice under which benefit levels are determined by combining pension funds with other income streams available to the retired employees." *Id.* at 514; *see Bonovich v. Knights of Columbus*, 963 F. Supp. 143, 148 (D. Conn. 1997) (permitting integration of participants' renewal commissions

with their pension plan benefits).[21] The Court further noted that "in considering this integration option, the House Ways and Means Committee expressly acknowledged the tension between the primary goal of benefit[t]ing employees and the subsidiary goal of containing pension costs." *Alessi*, 451 U.S. at 515. As a result, Congress chose the compromise position of protecting the overall level of benefits to which employees were entitled, while at the same time permitting employers to use funds freed up by the integration procedure to support the pensions of employees without access to such third-party sources of income.

Although CIGNA did not employ an integration procedure *per se* in defining benefit accrual under Part B, the company's use of a "greater of A or B" formula had a similar effect. Part B explicitly defines the "accrued benefit" of prior participants in Part A as "no . . . less than the present Equivalent Actuarial Value . . . of the Participant's Minimum Benefit" under Part A. Ex. 1 (Part B), at D00270 (§ 1.1(c)). The minimum benefit, in turn, is "the

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[21] Similarly, in *Williams v. Caterpillar, Inc.*, 944 F.2d 658 (9th Cir. 1991), the Ninth Circuit upheld a pension plan with different sub-plans for managers and non-managerial union workers. Upon retirement, employees who had worked both as managers and in non-managerial positions received the greater of the benefits as calculated under each of the sub-plans. Plaintiffs complained that in receiving benefits under the managers' sub-plan, they were required to forfeit the benefits they had earned under the non-managerial union workers' sub-plan. Citing *Alessi*, the court held that Caterpillar had broad discretion to determine the content of its employees' pension benefits and that Caterpillar had not abused that discretion. *Id.* at 664-65.

Participant's Part A Accrued Benefit, expressed in the form of a single life annuity commencing at the Participant's Normal Retirement Date," increased by the "Equivalent Actuarial Value of the . . . Preserved Spouse's Benefit" where applicable. *Id.* at D00280 (§ 1.32). CIGNA thus defined benefit accrual under Part B as occurring only when and if the cash balance account of prior Part A participants exceeds the minimum benefit under Part A. As *Alessi* made clear, this approach is permissible, and in fact CIGNA's Plan is more favorable to its employees than that approved by the Supreme Court. After all, CIGNA considers only benefits it already owes to participants under Part A, not additional sources of outside income such as workers' compensation. Unless a benefit has accrued under Part B, no impermissible forfeiture can take place, and so the Court must reject Plaintiffs' argument that in establishing a "greater of A or B" formula, CIGNA has required them to forfeit either the cash balance accruals, if they choose an annuity, or the early retirement benefits, if they choose a lump sum.

Two other courts have reached the same conclusion in similar circumstances, where employers used an "A or B" approach in shifting from a defined benefit to a cash balance retirement plan. In *Richards*, 427 F. Supp. 2d 150, FleetBoston established opening account balances for its employees in a manner similar to CIGNA's. Those employees who had previously accrued benefits under the old pension plan, as under Part B, would receive the greater of the cash balance account at the time of retirement or the frozen benefits under the prior plan. Early retirement benefits were not made a part of the opening account balances, and so FleetBoston employees argued that they were

required impermissibly to forfeit those benefits in order to receive the benefits accrued under the new plan, or were forced to forfeit the cash balance accruals if they chose the frozen benefits. FleetBoston, on the other hand, argued that no forfeiture existed, because employees always received the greater of the two amounts. Again looking to *Alessi*, the court held that

> the Amended Plan terms give Richards no claim to benefit accrual during the years in which her hypothetical account balance is below the value of her frozen Traditional Plan benefit. Section 203(a) gives Richards a non-forfeitable claim to her accrued benefit, but the balance of the hypothetical cash account does not become part of her accrued benefit until it surpasses the value of the frozen Traditional Plan benefit. Thus, the plan does not require a forfeiture of an accrued benefit, nor is the receipt of accrued benefits conditional.

427 F. Supp. 2d at 170. Thus, FleetBoston had authority to determine the content of the benefit that, once accrued, became non-forfeitable under ERISA, and the company chose to define the accrued benefit as the balance in the cash account *only if* it exceeded the frozen benefits.[22]

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[22] Plaintiffs attempt to distinguish *Richards* on the basis that Part B permits employees to choose between their frozen benefits (as an annuity) and their current benefits (as a lump sum), *see* Pls.' Post-Trial Reply Brief [doc. # 254], at 11-13, whereas FleetBoston's plan automatically provided participants with the greater of the two benefits. The Court does not find the presence of an employee election to be material to its

Similarly, in *Campbell v. BankBoston, N.A.*, 327 F.3d 1 (1st Cir. 2003), BankBoston shifted from a defined benefit to a cash balance plan, but put in place a "benefit safeguard" provision intended to ensure that employees who had accumulated benefits under the defined benefit plan would not receive less than the value of those benefits upon retirement. Given that Mr. Campbell's accruals under the old plan were significantly larger than the opening balance of his cash account, the implementation of the cash balance plan effectively ended his pension accrual. In upholding BankBoston's plan under ERISA, the First Circuit noted that "[b]enefits already earned under an old plan may not be taken away, but benefits expected but not yet accrued are not similarly protected." *Id.* at 8 (citations omitted). Thus, "[t]here was no forfeiture, because no accrued benefits were reduced; only expected benefits were reduced, which BankBoston could, under the law, modify or eliminate." *Id.*

For similar reasons, the Court reaches the same result with respect to Plaintiffs' early retirement benefits. Part B states:

> A Participant's normal retirement benefit shall be his Accrued Benefit at his Normal Retirement Date. Notwithstanding the foregoing, the amount of the Participant's normal retirement benefit, expressed in the

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analysis in light of its determination that there was no accrued benefit to forfeit, whether automatically or by choice, until the cash balance account exceeded the protected minimum benefit under Part A.

> form of a single life annuity, shall in no event be less than the greatest early retirement benefit he could have received if he had elected to retire and commence receiving his vested Accrued Benefit in the form of a single life annuity prior to his Normal Retirement Date.

Ex. 1 (Part B), at D00294-D00295 (§ 5.2(a)). Although this language would appear to support Plaintiffs, the text continues, "This provision is intended to comply with Treas. Reg. § 1.411(a)-7(c), and shall have no application except as required by that regulation." Treasury Regulation 1.411(a)-7(c) excludes Social Security offsets from the calculation of an employee's "early retirement benefit." 26 C.F.R. § 1.411(a)-7(c)(4)(i) ("For purposes of this paragraph [on calculating the normal retirement benefit], the early retirement benefit under a plan shall be determined without regard to any social security supplement."). Further, actuarial subsidies such as Part A's subsidized early retirement benefits are also ignored under the regulations for the purposes of calculating the normal retirement benefit. *See* 26 C.F.R. § 1.411(a)-7(c). Thus, Part B complies with the Treasury regulations by including only the value of the Preserved Spouse's benefit, where applicable, in the value of the minimum benefit under Part A, as the other benefits offered under Part A (the Social Security offset and the subsidized early retirement benefits) need not be included. A violation of the non-forfeitability statute, then, could only occur if a CIGNA employee chose a lump sum distribution worth less than the present actuarial value of his normal retirement benefit under Part A, plus the Preserved Spouse's benefit if applicable. Because Plaintiffs have not shown that

any employee in fact made such a choice, they have failed to demonstrate any impermissible forfeiture.

Plaintiffs cite to *Esden*, 229 F.3d 154, and *Berger*, 338 F.3d 755, for support, but these cases are inapposite. Both deal with the phenomenon known as "whipsaw." Whipsaw may occur when an employee under a defined benefit plan requests a lump sum disbursal of his benefits before reaching age 65. Cash balance plans must be "frontloaded" in order to be tax-qualified, meaning that the employee vests in his future interest credits at the same time that he vests in the underlying pay credits. As a result, he is entitled to the interest on any already-earned pay credits until the normal retirement age of 65, even if he chooses to retire sooner. If the employee retires at the age of 55 and requests a lump sum, for example, the employer must use a projection rate to calculate the actuarial value of the annuity at age 65, and then apply a discount rate to determine the present lump sum value of that annuity at the time of disbursal. The federal government sets the discount rate that pension plans must use to determine the present value of future sums, but the plans themselves set the projection rate. Thus, if the projection rate is higher than the discount rate (which was the case in *Esden* and *Berger*), then the present value of the employee's normal retirement benefit will exceed his current cash account balance. This disparity is known as whipsaw. In order to avoid paying employees a sum greater than the balance of their cash accounts, the employers in *Esden* and *Berger* adopted a special projection rate for these kinds of early retirement calculations, and set the projection rate equal to the government-mandated discount rate. The result was that the projected actuarial value of the normal

retirement benefit, when discounted to its present value, was equivalent to the balance in the cash accounts.

The courts in both *Berger* and *Esden* held that the employers' practice constituted an impermissible forfeiture of accrued benefits under 29 U.S.C. § 1053(a). *See Berger*, 338 F.3d at 761-62; *Esden*, 229 F.3d at 173. However, in both *Berger* and *Esden*, the benefits in question were future interest credits on underlying pay credits that the employees had already accrued. These future interest credits are unquestionably part of the normal retirement benefit that ERISA protects. Here, on the other hand, as already explained, Plaintiffs have not been required to forfeit any part of their normal retirement benefit. The pay and interest credits under Part B do not accrue (and so become part of the normal retirement benefit) until the balance of the cash account exceeds the minimum benefit under Part A, and all the elements of the benefits provided under Part A that ERISA protects from forfeiture are made part of the minimum benefit under Part B. As a result, *Esden* and *Berger* are simply irrelevant, and the Court finds as a fact that no violation of the non-forfeiture statute occurred here.

V. Plan Descriptions and Disclosures

Plaintiffs assert that CIGNA failed to provide certain required disclosures to its employees and that the plan descriptions that CIGNA did provide did not meet the statutory standards under ERISA. Before turning to the parties' arguments, however, the Court must first address CIGNA's contention that Plaintiffs did not sue the right defendant on these claims.

A. Plan Administrator. CIGNA argues that Plaintiffs' failure to name the plan administrator as a defendant, in addition to CIGNA and the CIGNA Pension Plan, is fatal to Plaintiffs' claims regarding plan descriptions and disclosures because only the plan administrator may be held liable for defects in the notices and disclosures required by ERISA.

The Court readily acknowledges that this particular area of ERISA is even more confused and confusing than other aspects of ERISA law. The confusion is apparent from the variety of approaches taken even within this District. For example, in *Custer*, 2008 WL 222558, the court never discussed the possibility that only the plan administrator could be held liable for failures in plan descriptions, despite the fact that the plaintiffs in that case had only named the plan and the employer as defendants. By contrast, in *Richards*, 427 F. Supp. 2d 150, the court focused on the nature of the relief requested – whether under ERISA § 502(a)(1)(B) or § 502(a)(3) – and dismissed claims against the employer brought under the former section but allowed claims under the latter.

Whether the plan administrator alone may be held liable for defects in statutorily-required notices and disclosures is more complicated than, and conceptually distinct from, the question of under which statutory section Plaintiffs seek relief. Under ERISA, the plan administrator is responsible for issuing certain required disclosures, such as periodic Summary Plan Descriptions ("SPDs") and Summaries of Material Modifications ("SMMs"), *see* 29 U.S.C. § 1024(b)(1), and notices of significant reductions in the rate of future benefit accrual under § 204(h). *See* 29 U.S.C. § 1054(h)(1). ERISA defines the plan administrator as "the person specifically so

designated by the terms of the instrument under which the plan is operated [or] if an administrator is not so designated, the plan sponsor." 29 U.S.C. § 1002(16)(A). In this case, the plan sponsor is CIGNA. *See* 29 U.S.C. § 1002(16)(B)(i). The plan administrator at the time the § 204(h) notice and 1998 and 1999 SPDs were published was Mr. Stewart Beltz, a CIGNA employee, and the current holder of that position is Mr. John Arko, another CIGNA employee. *See* Ex. 507, at SuppD1098, SuppD1092. Neither of these individuals was named as a defendant in this suit; the only defendants are CIGNA and the CIGNA Pension Plan.

In arguing that the plan administrator is the only party who can be sued on Plaintiffs' disclosure claims, CIGNA relies primarily on the statutory language in the sections of ERISA regarding the provision of notices and disclosures. Both § 204(h) and § 104(a), which discusses SMMs and SPDs, explicitly require the plan administrator to provide the documents at issue. *See* 29 U.S.C. § 1054(h) (an amendment is invalid unless "the *plan administrator* provides a written notice" meeting the requirements of the statute) (emphasis added); 29 U.S.C. § 1024(b)(1) (stating that "*[t]he administrator* shall furnish to each participant" the required SPDs and SMMs) (emphasis added). Indeed, Plaintiffs admit that "ERISA places the responsibility for these disclosures on the 'plan administrator.'" Pls.' Post-Trial Brief [doc. # 247], at 51. The Second Circuit has also noted this assignment of duties by permitting suits to recover benefits under a plan to proceed against the plan itself and/or the administrator of the plan, while restricting claims of inadequate disclosures to plan administrators only. *See Lee v. Burkhart*, 991 F.2d 1004, 1010 (2d Cir.

1993) ("ERISA undoubtedly requires that participants be told who has the financial obligation to fund the plans. But that obligation is placed on the person designated under ERISA as the 'administrator' of the plan, not on every fiduciary."); *Nechis v. Oxford Health Plans, Inc.*, 421 F.3d 96, 104 (2d Cir. 2005) (limiting liability for defective notices to administrators as defined by ERISA); *see also Klosterman v. W. Gen. Mgmt.*, 32 F.3d 1119, 1122 (7th Cir. 1994) ("Western General, the only defendant, cannot be held liable for any inaccuracies in the SPD. Congress has explicitly provided that the responsibility for complying with these statutory requirements falls on the plan administrator. The case law also confirms that any cause of action for violations of these disclosure requirements is proper only against the plan administrator, the party responsible under the statute.").

Plaintiffs have two responses to CIGNA's argument: first, that the designation of Mr. Beltz, and presumably also Mr. Arko, as plan administrator was procedurally defective (making CIGNA, as the plan sponsor, the default administrator); and second, that even if Mr. Beltz was the validly-appointed plan administrator, CIGNA effectively retained control over the content and provision of the documents at issue in this case and therefore CIGNA should be held liable for any defects in those documents.[23]

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[23] The Court requested after trial that counsel brief the possibility of adding the plan administrator (whether Mr. Beltz or Mr. Arko) as a defendant at this time. Plaintiffs were amenable to the idea but continued to assert that the addition was not necessary, see Plaintiffs' Brief on Whether an Individual Employee/Plan Administrator Can Be Added as a

Plaintiffs claim that CIGNA should be considered the plan administrator under 29 U.S.C. § 1002(16)(A) because Part B does not designate an individual by name as administrator. However, Treasury regulations explain that the plan instrument may "specifically designate" an administrator in a variety of ways:

> (1) By name, (2) By reference to the person or group of persons holding a named position or positions, (3) By reference to a procedure established under the terms of the instrument pursuant to which a plan administrator is designated, or (4) by reference to the person or group of persons charged with specific responsibilities of plan administrator. . . .

26 C.F.R. § 1.4[illegible]4(g)-1(a). The Court finds that CIGNA's Plan uses the third method to designate an administrator. Article XIII, "Plan Administration," states that "[t]he [Corporate Benefit Plan] Committee shall delegate to a Plan Administrator

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Defendant [doc. # 265]; CIGNA objected to the addition and also argued that the claims against the administrator would not relate back to the original Complaint and so would be untimely. *See* Defendants' Memorandum of Law in Response to the Court's September 24, 2007 Order Regarding the Addition of a New Defendant and Notice of Supplemental Authority [doc. # 264]. In light of the contentiousness of the issue and the Court's resolution of the question on other grounds, the Court did not pursue the matter further. However, the Court notes that had Plaintiffs' counsel, even simply in an excess of caution, elected to name the plan administrator in addition to the company and the Plan itself, substantial confusion and effort would have been avoided.

the duties, authority and functions set forth in this Article XIII," and that "[t]he Plan Administrator shall perform all such duties as are necessary to operate, administer and manage the Plan in accordance with [] its terms . . . ." Ex. 1 (Part B), at D00329 (§§ 13.1, 13.2). Thus, the Court agrees with CIGNA that detailing the procedure by which Mr. Beltz was eventually chosen was sufficient to satisfy the "specific designation" requirement under ERISA and Treasury Regulation 1.414(g)-1(a). The Court, therefore, rejects Plaintiffs' first response to CIGNA's argument that Plaintiffs have sued the wrong defendant.

However, the Court agrees with Plaintiffs regarding CIGNA's role in the actual administration of Part B. Despite its finding regarding the validity of Mr. Beltz's appointment as plan administrator, the Court believes that CIGNA should be treated as a *de facto* administrator or co-administrator of the Plan for purposes of the disclosures at issue in this case.[24] For the Court finds, on the basis of numerous facts, that CIGNA, and not the plan administrator, had exclusive responsibility for the preparation and publication of these notices and disclosures. In fact, Mr. Beltz, the plan administrator named in the 1998 and 1999 SPDs, was so peripheral to those issues that he was not even on CIGNA's list of likely witnesses at trial. *See* Defendants' Trial Memorandum [doc. # 180], at 9. Instead, Ms. Denise Hill, a former Vice President, Corporate Relations, Director of Human Resources, was designated as the

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[24] As a result, the Court need not address Plaintiffs' arguments under *respondeat superior*. *See, e.g.*, Pls.' Post-Trial Reply Brief [doc. # 254], at 75-81.

person to testify regarding "[c]ommunications about the conversion to Part B and the operation of Part B." *Id.* Indeed, Mr. Arko, the current administrator of the Plan and CIGNA's Rule 30(b)(6) witness, who was scheduled to testify at trial but was not called, testified at his deposition that he had not contacted Mr. Beltz in preparation for his deposition to determine if Mr. Beltz had any documentation relevant to the preparation of CIGNA's notices and disclosures. *See* Ex. 194 (Arko Dep.), at 51:11-18.

Further, the Signature Benefits Newsletter published in November 1997, entitled "Introducing Your New Retirement Program," was published by CIGNA Benefits Communications. *See* Ex. 516, at D00607. Mr. Beltz's name is mentioned nowhere in this newsletter, and indeed the newsletter informs readers, "If you have questions, please e-mail your questions to Signature Benefits Services . . . or you may call Signature Benefits Services . . . ." *Id.* at D00612. The December 1997 Retirement Kit, one section of which is entitled "Transition to the New CIGNA Retirement Plan," was also published under the Signature Benefits rubric and includes the same contact information for questions regarding Part B. *See* Ex. 508, at D00718, D00733.

Although the October 1998 and September 1999 SPDs both list Mr. Beltz as the plan administrator, *see* Ex. 505 (1998 SPD), at D00842; Ex. 506 (1999 SPD), at D00632, both also carried the "Signature Benefits" logo, and there is no indication that Mr. Beltz was in any way involved in the preparation or dissemination of the SPDs. These documents were also the first to indicate that CIGNA employees should contact Mr. Beltz, rather than Signature Benefits Services, regarding questions about the Plan. *See* Ex. 505 (1998 SPD), at D00841; Ex. 506

(1999 SPD), at D00631. Yet even then, the direction to contact the plan administrator was only in the section entitled "Statement of ERISA Rights." Ex. 505 (1998 SPD), at D00840-D00841; Ex. 506 (1999 SPD), at D00631. The "Administrative Details" section, on the other hand, which listed common issues regarding the Plan in question-and-answer format, told participants they should contact the Retirement Service Center if they had a "general question about [their] pension plan." Ex. 505 (1998 SPD), at D00835; Ex. 506 (1999 SPD), at D00628. In a similar vein, it appears that CIGNA as an entity, and more specifically Ms. Hill rather than Mr. Beltz, took an active role in seeking out William Mercer, a consulting firm, for assistance in providing information regarding the transition to Part B and in preparing the ERISA notices required as a result of that transition. *See* Ex. 117 (prospectus provided by Mercer to CIGNA, not Mr. Beltz, regarding a contract to prepare § 204(h) notices, SMMs, and SPDs); Ex. 118 (request for approval of consulting services, from Denise Hill and David Durham to Ted Detrick). Mr. Beltz was not a listed recipient of Ms. Hill's request for the approval of Mercer's consulting services, nor was he listed even as a "cc" on that document.

However, CIGNA argues that even were it to be considered a *de facto* co-administrator of the Plan, the Second Circuit has foreclosed any possibility that CIGNA could be held liable as such for any defects in the disclosures under § 502(a)(1)(B).[25] In *Crocco*, the

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[25] Section 502(a)(1)(B) authorizes a civil action "by a participant or beneficiary" "to recover benefits due to him under the terms of [the] plan, to enforce his rights under the terms of

Second Circuit held that lawsuits to recover benefits under § 502(a)(1)(B) lie only against "the plan and the administrators and trustees of the plan in their capacity as such," and that an employer may not be considered a *de facto* co-administrator if an administrator has been designated in accordance with the requirements of ERISA. *See Crocco*, 137 F.3d at 107; *Nechis*, 421 F.3d at 104.

While the language of *Crocco* is clear, it is less apparent to the Court that *Crocco* had in mind the factual circumstances of a case like this. *Crocco* involved an individual employee's claim for benefits under the plan, which the administrator herself denied; the company had no involvement other than in its role as employer of the administrator. Indeed, the relief ordered was a remand to the administrator for the statutorily required "full and fair review" of the denial of Ms. *Crocco's* claim. *See Crocco*, 137 F.3d at 109. Here, on the other hand, CIGNA retained full control over the processes alleged to have violated ERISA, such as the issuance of notices and disclosures, and the allegations go far beyond the administrator's denial of a single employee's claim to benefits. Mr. Beltz had no apparent involvement in, or control over, these processes or disclosures, in direct contrast to the administrator in *Crocco*, suggesting that *Crocco* might not be a bar to holding CIGNA liable for the disclosures as a *de facto* co-administrator of the Plan. Despite these observations, unless and until the Second Circuit

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the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B).

clarifies its holding in *Crocco*, this Court is bound by it, and as CIGNA points out, the plain language of *Crocco*'s holding prevents the Court from finding CIGNA liable for inadequate disclosures under § 502(a)(1)(B), even if – as the Court finds – CIGNA should be considered a *de facto* co-administrator for the purpose of those disclosures.

Even under *Crocco*, however, Plaintiffs are not deprived of all relief. The Second Circuit in *Crocco* was careful to distinguish between lawsuits to recover benefits under § 502(a)(1)(B), which can be brought only against a plan[26] or its administrator, and claims against an employer on behalf of the plan for a breach of fiduciary duty under § 502(a)(2) or claims for injunctive or other equitable relief under § 502(a)(3). *See Crocco*, 137 F.3d at 107 n.2. The court in Crocco expressly limited its holding only to § 502(a)(1)(B) claims. *See id.* at 107. Judge Hall

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[26] To the extent Plaintiffs seek to recover benefits under the Plan under § 502(a)(1)(B), they may pursue such claims against the Plan itself, which is a named defendant. *See* 29 U.S.C. § 1132(d)(1) ("An employee benefit plan may sue or be sued under this subchapter as an entity."); *Chapman v. ChoiceCare Long Island Term Disability Plan*, 288 F.3d 506, 509 (2d Cir. 2002) ("Several times in prior opinions we have indicated that a plan is a proper defendant in an action to recover benefits under § 1132(a)(1)(B)."); *Leonelli v. Pennwalt Corp.*, 887 F.2d 1195, 1199 (2d Cir. 1998) ("In a recovery of benefits claim, only the plan and the administrators and trustees of the plan in their capacity as such may be held liable."); *Am. Med. Ass'n v. United HealthCare Corp.*, No. 00 Civ. 2800 (LMM), 2007 WL 1771498, at *22 (S.D.N.Y. June 18, 2007) ("It is well-settled – both within this Circuit and within the instant litigation – that claims for monetary benefits under ERISA § 502(a)(1)(B) may be asserted only against the plan, or the administrators or trustees of the plan.") (quotation marks omitted).

recognized this distinction recently in *Richards*, where she noted that "*Crocco* left open the possibilit[y] that a plan participant might sue a corporate employer who was not a named plan administrator as a fiduciary, where the participant is bringing a breach of fiduciary duty claim, and that a participant might be able to sue the corporate employer for equitable relief under section 502(a)(3)." 427 F. Supp. 2d at 181; *see Crocco*, 137 F.3d at 107.

Thus, the Court holds that Plaintiffs may pursue their disclosure claims against CIGNA, but only to the extent Plaintiffs seek injunctive or equitable relief under § 502(a)(3). Pragmatically, the Court notes that CIGNA is in the best position to respond to any injunctive and equitable relief requested, as the Plaintiffs' claims focus not so much on the denial of any individual employee's request for benefits – over which the individual plan administrator would have ultimate authority – but rather on the decision to implement Part B in the manner the company did and the entire information program regarding the transition from Part A to Part B. These decisions, and the related notices and disclosures prepared by CIGNA, were directed from the highest levels of the company, and Mr. Beltz appears to have had no control over, or even input into, the process.[27]

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[27] In this respect, the current case is distinguishable from *Lee*, 991 F.2d 1004, in which the Second Circuit held that a third party could not be considered a *de facto* co-administrator with respect to allegedly defective disclosures. *See id.* at 1010. There, the plaintiffs did not allege that their employer had designated the third party as an administrator for the purpose of disclosures, nor did they allege that their employer had delegated its disclosure duties to the third party. Here, in contrast, Plaintiffs argue, and the Court finds, that CIGNA

Indeed, one of the primary disclosures that Plaintiffs argue was misleading (as discussed below) was a letter to plan participants from CIGNA's CEO, Bill Taylor, which was featured on the first page of the CIGNA newsletter introducing Part B. Furthermore, the fact that Mr. Beltz is currently retired and in no position to provide any equitable relief this Court may deem appropriate also weighs in favor of allowing Plaintiffs to pursue their inadequate disclosure claims against CIGNA under § 502(a)(3). *See Richards*, 427 F. Supp. 2d at 181 (permitting claims under § 502(a)(3) to go forward against a corporate employer not named an administrator under the company plan); *Hall v. LHACO, Inc.*, 140 F.3d 1190, 1196 (8th Cir. 1998) ("Only the Plan and the current plan administrator can pay out benefits to *Hall*. . . . LHACO, even if it once was the plan administrator for Hall's Plan, is no longer in that capacity, and thus cannot be enjoined to make payments of benefits from the Plan."); *Colin v. Marconi Commerce Sys. Employ. Ret. Plan*, 335 F. Supp. 2d 590, 597 (M.D.N.C. 20[illegible]) ("More on point are the numerous decisions stating that a party which does not have any control or discretion over a plan is not a proper party to an action for ERISA benefits.") (collecting cases). CIGNA appears to have acknowledged as much in a previous filing with this Court, representing to Judge Squatrito (who earlier presided over this case) that "[i]f the Court orders

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should be considered the administrator of the Plan for purposes of the statutorily required notices and that CIGNA affirmatively took on itself responsibility for providing the notices and disclosures in question.

that a provision of the Plan must be changed or removed, the Plan, acting through its trustees and fiduciaries, must then implement that relief as to all of the Plan's participants." Defendants' Opposition Brief [doc. # 30], at 8. Therefore, the Court concludes that Plaintiffs are permitted to pursue their claims of allegedly defective notices and disclosures against CIGNA under § 502(a)(3), but *not* § 502(a)(1)(B).

B. Statutorily Required Notices and Disclosures. As part of its efforts to protect employees' retirement benefits and employees' reasonable expectations regarding those benefits, ERISA requires plan administrators to provide plan participants with certain notices and disclosures. These include § 204(h) notices of significant reductions in the rate of future benefit accrual, Summaries of Material Modifications ("SMMs") to the plan, and Summary Plan Descriptions ("SPDs"). Plaintiffs here claim that CIGNA, acting as plan administrator, failed to comply with ERISA's statutory and regulatory notice requirements.[28]

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[28] As part of their case regarding CIGNA's notices, Plaintiffs submitted an expert report by a communications professor, James Stratman. *See* Ex. 8. In that report, Prof. Stratman presented his analysis of CIGNA's notices and suggested respects in which those notices might be considered deficient for their failure to communicate in a readily understandable manner certain features of the transition to Part B and the terms of Part B itself. CIGNA sought to exclude this testimony under *Federal Rule of Evidence* 702, on the ground that the proffered report encompassed legal conclusions that experts are not permitted to make. *See* Motion *in Limine* [doc. # 178]. The Court denied CIGNA's motion to exclude and admitted the evidence subject to CIGNA's continuing objection. *See* Order [doc. # 214]. The Court need not address CIGNA's continuing

They allege both procedural and substantive defects, and argue that at least some aspects of Part B may be invalid as a result. Finally, they claim that CIGNA sought by means of these inadequate notices and disclosures to avoid the negative employee reaction that otherwise might have accompanied the transition to Part B. CIGNA, for its part, asserts that it provided all the notice required and that its notices and disclosures were not materially misleading.

The publications in question are: the November 1997 Signature Benefits Newsletter, which CIGNA has identified as a § 204(h) notice; the December 1997 Retirement Program Information Kit, which CIGNA has identified as an SMM; the October 1998 SPD for Part B; and the September 1999 SPD for Part B. Plaintiffs claim that the § 204(h) notice was deficient because it failed to inform plan participants of a significant reduction in the rate of future benefit accrual under Part B, and that the SMM and SPDs were deficient because they failed to inform plan participants of the possibility of wear away and of the possibility that accrued benefits under Part A might not be fully protected. The Court will first address the § 204(h) notice and then turn to the SMM and SPDs.

Section 204(h). Section 204(h) does not permit amendments to a plan "so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan

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objection here, as the Court has not relied on Prof. Stratman's report in its analysis of the disclosures at issue.

amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effective date" to all plan participants and certain other parties. 29 U.S.C. § 1054(h)(1).[29] Treasury regulations make clear that "[f]or purposes of section 204(h), an amendment to a defined benefit plan affects the rate of future benefit accrual only if it is reasonably expected to change the amount of the future annual benefit commencing at normal retirement age." 63 Fed. Reg. 68678, at 68681 (Treas. Reg. 1.411(d)-6, Q&A-5).[30] Thus, reductions or eliminations of early retirement benefits, for example, do not require a § 204(h) notice. *See id.* ("[T]he rate of future benefit accrual is determined without regard to optional forms of benefit (other than the annual benefit described in paragraph (a) of this Q&A-5), early retirement benefits, or retirement-type subsidies, within the meaning of such terms as used in section 411(d)(6) of the Code (section 204(g) of ERISA)."). The regulations also provide that whether a

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[29] Section 204(h) was amended in 2001. For the sake of convenience, the Court notes that all citations to that section refer to the 2000 version of the statute unless otherwise indicated.

[30] This Court adopts the *Depenbrock* court's determination that the amendment enacting Part B was formally executed on December 21, 1998. *See Depenbrock*, 389 F.3d at 83. As such, the 1998 Final Regulations, 63 Fed. Reg. 68678, which apply to amendments adopted on or after December 12, 1998, govern. The 1995 Temporary Regulations, however, are in any case identical in all respects relevant to this case. For the sake of convenience, all citations are to the 1998 Final Regulations unless otherwise noted.

contemplated reduction is "significant" is "determined based on reasonable expectations taking into account the relevant facts and circumstances at the time the amendment is adopted." *Id.* (Q&A-7). Because a § 204(h) notice is aimed at providing participants with a "heads up" about changes to the plan, only those employees who are current participants in the plan, and whose benefits are "reasonably expected" to be reduced, must receive notice. *See id.* at 68681-82 (Q&A-8); *id.* at 68682 (Q&A-9(b)) ("Whether a participant or alternate payee is described in paragraph (a) of this Q&A-9 [as a "participant whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment"] is determined based on all relevant facts and circumstances at the time the amendment is adopted."). Put another way, if a § 204(h) notice is not due an employee at the time of amendment, the notice is never required to be provided to the employee, even if the employee's benefits end up being reduced as a result of the amendment at some future point in time.

As for the content of the notice itself, § 204(h) – as it existed prior to 2001 – required only the text of the amendment and its effective date. *See* 29 U.S.C. § 1054(h). The regulations also permitted the substitution of a summary of the amendment for the actual text, provided that it was "written in a manner calculated to be understood by the average plan participant and contain[ed] the effective date." 63 Fed. Reg. at 68682 (Treas. Reg. 1.411(d)-6, Q&A-10). However, "[t]he summary need not explain how the individual benefit of each participant or alternate payee will be affected by the amendment." *Id.* Generally, and except under limited circumstances not present here, an amendment that is not

accompanied by a valid § 204(h) notice is void. *See id.* at 68682-83 (Q&A-13, -14).

Before turning to the substance of CIGNA's § 204(h) notice, however, the Court must determine whether the circumstances of Part B's implementation meant that such a notice was not required. The first argument against the necessity of a § 204(h) notice is that Part B did not actually work a significant reduction in plan participants' benefit accrual. CIGNA froze the accrual of benefits under Part A as of December 31, 1997. *See* Ex. 2 (Part A), at D00132 (Am. No. 4). Part B was not formally established until December 21, 1998. *See Depenbrock*, 389 F.3d at 83. CIGNA provided a § 204(h) notice regarding the original freeze in the November 1997 Newsletter, *see* Ex. 516, at D00611, and argues that no later such notice was necessary, because any accrual under Part B was necessarily greater than the total lack of accrual under the freeze.

The Court does not find this argument persuasive. While it is true that a resumption of benefit accrual after a freeze would normally constitute an increase, rather than a decrease, in that accrual, the freeze here was nominal at best. CIGNA always intended to establish Part B, and simply wished to cease its obligations under Part A while it worked out the final details of the new plan. As CIGNA stated in its 1997 Newsletter, in the first sentence of the first paragraph, "On January 1, 1998, CIGNA will introduce a new retirement program." Ex. 516, at D00607. Later in the same newsletter, CIGNA wrote,

> Employees participating in the new CIGNA Retirement Plan will stop earning benefits

> under the current Pension Plan on December 31, 1997. Prior to April 1998, CIGNA will *formally adopt* the new CIGNA Retirement Plan, with all legally required terms and provisions. The effective date of the new plan, which will technically be an amendment to the existing plan, *will be January 1, 1998.*

Id. at D00611 (emphasis added). Thus, CIGNA made clear from the outset that its intent was to shift directly from Part A to Part B, with the freeze only as an interim stopgap. CIGNA reassured its employees of this fact by telling them, "Once [opening] balances are calculated, they will be credited to Retirement Plan accounts *retroactively to January 1, 1998*, so you won't lose any interest credits for the first part of 1998." *Id.* (emphasis added). As another district court in this Circuit has noted, "It is not so obvious to this Court that when there is a freeze in benefits, along with the promise of retroactive benefit accruals once the new Plan is adopted, any additional benefit accruals at all constitute an overall increase because the baseline is zero." *Brody v. Enhance Reinsurance Co. Pension Plan*, No. 00 Civ. 9660(LAP), 2003 WL 1213084, at * 11 (S.D.N.Y. Mar. 17, 2003) (citation omitted). The Court finds further support for its position in the purpose underlying ERISA's notice requirements, namely to protect employees' interests and their reasonable expectations. Permitting employers to avoid these important obligations simply by exploiting the technicality of "freezing" old benefits before retroactively instituting new ones runs diametrically opposite to that purpose, and the Court refuses to adopt such a position.

The second reason CIGNA claims a § 204(h) notice was not required is that § 204(h) notices are intended to provide a warning to employees regarding prospective changes to their retirement plan, but Part B was implemented retroactively. The statute specifically requires publication of the notice "after adoption of the plan amendment and not less than 15 days before the *effective date* of the plan amendment." 29 U.S.C. § 1054(h)(1) (emphasis added); *see also Frommert v. Conkright*, 422 F.3d 254, 266 (2d Cir. 2006) (refusing to accept tardy notice in lieu of required advance notice under § 204(h)). Thus, literal compliance with the statute in the case of a retroactive amendment would appear to be difficult, if not impossible. However, the Court does not believe that this difficulty compels the conclusion either that a § 204(h) notice was not required or that Part B, at least with respect to its retroactivity, was by necessity invalid. A primary purpose of notice under § 204(h) is to provide employees the opportunity to learn about changes to their retirement plan and perhaps to complain or otherwise seek to modify those changes if they are unacceptable. If CIGNA had provided notice after the adoption of Part B in December 1998, but before the formal retroactive implementation of Part B, plan participants would have had advance notice of the changes, as ERISA requires, but would also have retained the retroactive benefit accruals. The possibility of retroactive accruals is attractive both to employers, such as CIGNA, who may need time to implement a new program but wish to provide benefit accruals for the implementation period once the plan is complete, and to employees, who would obviously prefer to accrue (even reduced) benefits retroactively if the other option is no benefits at all

while the employer perfects the new plan. Thus, the Court finds that the retroactive nature of Part B, standing alone, is insufficient to defeat an otherwise-existing requirement to issue notice under § 204(h).

Without the obstacles of a freeze or retroactivity, and comparing the benefit accruals under Part A with those under Part B, the Court finds that a significant reduction occurred. CIGNA itself admitted at trial that if CIGNA "never adopted the cash balance plan," "[plan participants] would have a larger benefit than they have under th[e] conversion." Trial Tr. 908:20 to 909:1. Plaintiffs' expert testified that switching from a final or highest average formula to a career average pay formula itself is almost guaranteed to cause a substantial reduction in future benefits, and in fact, such a result is commonsensical. *See, e.g.*, Trial Tr. 258:5-22 (Mr. Poulin agreeing with the Court that "typically employee salaries increase over time," so "by merely switching . . . from a final average . . . to [a] career average . . . you necessarily will affect negatively the accrual average"); Ex. 10 (Sher Report), at 19, 20 n.12 (Mr. Sher estimating that the prior Tier 1 accrual rate, net of a Social Security offset, was approximately 1.5% of highest pay, while the accrual rate under Part B, assuming 4.5% annual salary increases, was approximately .75% of highest pay).[31] In addition, all of the factors mentioned in

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[31] The Court must infer Mr. Sher's agreement with the substance of this statement from calculations made in his expert report, as CIGNA directed him not to prepare or include any explicit benefit comparisons in his supplemental report. *See* Ex. 193 (Sher Deposition), at 31:11 to 32:25; Trial Tr. 1214:3 to 1215:23. The Court recognizes that Mr. Sher testified that switching from a final pay average to a career pay average

the previous discussion of wear away that contributed to lower opening account balances for certain plan participants would also have reduced the rate of benefit accrual for those participants, because they would receive fewer interest credits as a result. For example, an internal CIGNA memorandum from Gerry Meyn regarding Class member John Depenbrock stated that "John's projected pension value (present at age 55) if he had continued in Part A earning 2% per year would have been $1.8 million. The projected pension value at age 55 under present circumstances [i.e., under the cash balance plan] is $1.0 million." Ex. 70, at D01146. This change constituted a 45% reduction in Mr. Depenbrock's benefits. *See also* Ex. 41 (2001 Interoffice Memo from David Durham to Gerry Meyn), at D028654 (chart showing old pension plan benefits for a hypothetical employee at age 65 as 53% of final pay, compared with 31% under the cash

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need not *necessarily* result in a reduction in benefits, depending on the terms of the plans involved, *see* Trial Tr. 1346:20 to 1347:1, but takes the calculations in his expert report as an indication that he would not disagree with this statement in the context of CIGNA's transition. In further support of this conclusion, the Court notes that in an article Mr. Sher previously published, he acknowledged that "[t]he change to a more even accrual pattern [by means of a transition from a traditional pension plan to a cash balance plan] and the move away from early retirement subsidies tends to result in a slower growth of future benefit accruals (or even no growth for a while) for some mid-career employees." Ex. 68, at P2248. Thus, Mr. Sher appears at least to agree that the transition to a cash balance plan often results in a reduction of the *rate* of benefit accrual, the metric on which § 204(h) is focused.

balance plan, and as 35% at age 55, compared with 17% under the cash balance plan). Similarly, Mr. Robert Upton, one of the few employees to receive a comparison of benefits under the new and old plans, discovered that his benefits under the cash balance plan, even using an interest rate that he considered unrealistically high, were 29% lower than those he would have received under Part A. *See* Trial Tr. 657:1-16. Using a 5.8% interest rate, the reduction climbed to 44%. *See* Trial Tr. 662:2-11.

Given that a § 204(h) notice was in fact due to plan participants, the Court now turns to the appropriate content for that notice. The discussion is somewhat complicated by the fact that the relevant Treasury regulations have been amended since 1998 to require additional information, such as the disclosure of wear away. CIGNA argues that at the time Part B was established, CIGNA was required at most to provide a summary of the amendment and its effective date; no explanation of the nature or extent of the reductions themselves, or even an indication that the notice was intended to comply with § 204(h), was necessary. Plaintiffs, on the other hand, assert that not only was a statement needed to the effect that "your benefits may be reduced," but in order to comply with the requirement that the summary be "written in a manner calculated to be understood by the average plan participant," 63 Fed. Reg. at 68682 (Treas. Reg. 1.411(d)-6, Q&A-10), some explanation of wear away and the other means by which benefits would be reduced was required. After all, a "direct" reduction of benefits from $20 to $10 a month may be self-explanatory, but the complicated provisions of Part B, and the interactions among them that had the potential to produce the wear away effect and other "indirect" reductions, were not.

Plaintiffs argue that it was unrealistic of CIGNA to believe that a summary of Part B, without explicitly acknowledging the potential for reductions and how they might occur, could be comprehensible to the average plan participant. As Mr. Sher has written elsewhere, "For the same reason that it's hard to compare apples with oranges, employees will find it difficult to compare benefits under a cash balance plan with those under the prior traditional plan – no matter what information is provided." Ex. 68, at P2248.

Happily, the Court need not resolve this issue today, for even if § 204(h) did not require the additional information regarding reductions that Plaintiffs request, the statute certainly does not permit CIGNA to avoid providing such information and to offer material misrepresentations suggesting benefit increases instead. CIGNA, through Mr. Arko, the company's Rule 30(b)(6) witness, identified the 1997 Newsletter as its § 204(h) notice. *See* Ex. 239 (Arko Dep.) at 41:17 to 44:21. Mr. Arko pointed to the article on page 5, entitled "Opening Balances To Be Calculated Next Spring," as providing the information required by § 204(h). *See id.* at 47:16 to 48:4; *id.* at 48:19-23 ("I think that this story satisfies to the extent we were trying to put a 204(h) notice out, that this was – this notice and that story was intended to do that."). However, when Plaintiffs' counsel at deposition asked Mr. Arko specifically about each section of the article and whether that section indicated to the reader that benefit accruals would be reduced under Part B, Mr. Arko admitted it did not. *See id.* at 81:5 to 85:8. Finally, when asked, "Is there something in this article that tells employees that their benefits will be reduced under the new plan?," Mr. Arko responded, "No." *Id.* at

85:5-8. There is no such statement in any of the other, later notices provided by CIGNA either. *See* Trial Tr. 600:5-9 (The Court: "I just wanted to establish that. There's nothing that would give anyone any direct certainly explicit statement [] regarding the fact that they may be subject to the wear away." Mr. Moukawsher: "Correct."). Notably, CIGNA did not call Mr. Arko as a witness at trial, even though he was listed as such and even though CIGNA had previously assured the Court that it would "put somebody on who could explain" the wear away that Ms. Flannery testified she had experienced. Trial Tr. 922:12-17 (Mr. Blumenfeld: "Your Honor, I'm not exactly sure but what may be going on there relates to whether there's an early retirement subsidy in the minimum benefit that wouldn't be part of the normal retirement benefit, but I would expect we would put somebody on who could explain that better than we."); *see also* Trial Tr. 909:4 to 910:9 (The Court: "I want to know more about the error [regarding the failure to include the Preserved Spouse's benefit on Ms. Flannery's benefit election form] because I'm very concerned. . . . [S]omebody ought to explain it and tell me . . . that this is a one off, these things happen; or this is something more systemic . . . . [A]ll I'm saying is, I want to hear from you and I want to hear testimony from you." Mr. Costello: "Sure, and you will."). Nor did CIGNA follow through on its assertion in its Pre-Trial Brief that "Defendants anticipate that a number of Plaintiffs and Class members will testify that they did not find the SPD misleading [and] were not wanting for any additional pension information." Defendants' Trial Brief [doc. # 182], at 64.

Instead, CIGNA offered statements that misled plan participants into believing that significant

reductions in the rate of future benefit accrual were not a component or a possible result of Part B. For example, the inset panel on the first page of the 1997 Newsletter, featuring "A Message from CEO Bill Taylor," states that he is "pleased to announce that, on January 1, 1998, CIGNA will *significantly enhance* its retirement program." Ex. 516, at D00607 (emphasis added). The newsletter also notes that, in contrast to Part A, which benefitted primarily those employees who stayed with CIGNA "for their whole career," "the new plan is designed to work well for *both* longer-and shorter-service employees. The new plan provides steadier benefit growth throughout your career." *Id.* at D00610 (quotation marks omitted). Further, CIGNA stated explicitly that "[o]ne advantage the company *will not* get from the retirement program changes is cost savings." *Id.* Thus, nothing in the Newsletter indicated to plan participants that their rate of benefit accrual might decrease, much less by a significant margin. And yet that is exactly what happened.

Even looking outside the purported § 204(h) notice to the other publications provided by CIGNA, information regarding possible reductions in the rate of future benefit accrual is equally non-existent. In the question-and-answer section of the Retirement Kit, for example, CIGNA reiterated that it "is *not* reducing the overall amount it contributes for retirement benefits, nor has the new program been designed to save money." Ex. 508, at D00725.[32]

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[32] CIGNA argues that additional contributions to SIP counterbalanced any savings from the implementation of Part B. *See* Defs.' Post-Trial Brief [doc. # 251], at 94. At trial, however, Plaintiffs noted that a portion of CIGNA's additional

While CIGNA admitted that certain long-term employees would remain in Part A because "[t]hese employees couldn't match this benefit growth under the new plan," it went on to assure readers that "[o]ther employees and all new hires will be able to earn *comparable benefits* as career employees under the CIGNA Retirement Plan." *Id.* (emphasis added). With respect to those employees hired before 1989 but moved into Part B due to insufficient age and service points for grandfathering, CIGNA emphasized, "Our analysis showed that, in comparison to people with a higher age and service combination, you have plenty of time to take full advantage of the many attractive features of the Retirement Plan, plus you will have access to the new lump sum payment option." *Id.* Later in the Retirement Kit, CIGNA reiterated, "The new Retirement Plan is different from the current Pension Plan, so exact comparisons of benefits that cover all possible outcomes are difficult. Generally speaking, the new Retirement Plan, in comparison with the current Pension Plan, tends to provide larger benefits for shorter-service employees and

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contributions to SIP were entirely discretionary on CIGNA's part, *see* Trial Tr. 1564:6 to 1565:4, and their expert, Mr. Poulin, agreed that changes to the defined benefit plan could not be offset, for purposes of ERISA notices, by changes to another benefit program. *See* Trial Tr. 1563:22 to 1564:5. Further, charts prepared by Mercer suggest that CIGNA would have had to provide the maximum discretionary contribution each year and SIP would have had to earn a 9% rate of interest each year in order for the additional benefits under SIP to approximate the reductions under the cash balance plan. *See* Ex. 83, at SuppD1623-SuppD1626.

comparable benefits for longer-service employees." *Id.* at D00729. Further, CIGNA noted that "[t]he lump sum distribution option can be very valuable." *Id.* In the section entitled "Growth over time . . .," CIGNA reassured plan participants that "[e]ach dollar's worth of credits is a dollar of retirement benefits payable to you after you are vested. Under the plan, your benefit will grow steadily throughout your career as credits are added to your account." *Id.* at D00740. The SPDs made similar statements. *See* Ex. 505 (1998 SPD), at D00828; Ex. 506 (1999 SPD), at D00624. Last but not least, CIGNA assured its employees that "[t]he conversion factors we are using to determine your opening account balance are based on guidelines established by the government to ensure a fair transition for employees," Ex. 508 (Retirement Kit), at D00726; *see also* Ex. 505 (1998 SPD), at D00833 ("The conversion formula used is based on guidelines established by the federal government for valuing pension benefits."); Ex. 506 (1999 SPD), at D00627 (same), guidelines that CIGNA now admits do not exist. *See* Defendants' Post-Trial Proposed Findings of Fact [doc. # 250], ¶ 19 ("There is no provision of law that sets forth minimum requirements for determining opening balances.") (citing GAO Report on conversions to cash balance plans, Ex. 533).

CIGNA claims that the information it provided to plan participants regarding the opening account balances and how they were created, as well as the annual account statements and Total Compensation Reports, constituted sufficient disclosure of all the material aspects of the Plan, thus negating any deficiencies in the notices themselves. The Court disagrees. Although the Court recognizes that the opening account balance materials included a

substantial amount of useful information regarding Part B, the Court does not accept CIGNA's contention that the information it provided regarding the establishment of the opening account balances negates the defects in the previously provided notices and disclosures. For the problem lies not with the volume of information CIGNA chose to provide, but rather with some of the statements made in CIGNA's disclosures, which the Court finds were not written in a manner calculated to be understood by the average plan participant and which failed to include important details regarding the transition to Part B that reasonable employees would have wanted to know.

CIGNA was aware of this potential for confusion. CIGNA stated clearly in the Retirement Kit that "exact comparisons of benefits . . . are difficult," Ex. 508, at D00729, and Mr. Sher, CIGNA's expert, has compared the expression of benefits under traditional defined benefit plans and cash balance plans as "apples" and "oranges." Ex. 68, at P2248. Simply providing information about the setup and content of the opening account balances could not counteract the more favorable impression made by CIGNA's other statements about the positive features of the new plan and how employees' benefits would grow under Part B. Finally, given the substantial amount of misinformation on the subject contained in the notices and disclosures CIGNA provided, the Court refuses to accept that the information regarding the opening account balances, while admittedly accurate, cured the defects in the previous disclosures. *See, e.g., In re Citigroup*, 470 F. Supp. 2d at 339 ("Plaintiffs had every reason to expect that under the new cash balance plan, their pensions would continue to accrue at a rate approved

by Congress. It therefore is immaterial that the December 1999 § 204(h) notice stated in bolded font that the 2000 CBA could result in a reduction of their benefits. Given the material omissions, it remained insufficiently accurate and comprehensive to reasonably apprise plan participants and beneficiaries of their rights. Nor can it be said that the notices allowed applicable individuals to understand the effect of the plan amendment because plaintiffs were without fair warning that the formula endangered their right to a minimum rate of benefit accrual.") (quotation marks and alteration omitted); *Hirt*, 441 F. Supp. 2d at 538 ("A notice is intended to give fair warning, and fails to do so if it is cryptic, or requires research beyond the document itself.").

CIGNA employees suffered from the lack of accurate information in CIGNA's disclosures, and CIGNA was aware of this fact. For example, in August 1997, CIGNA asked a group of managers to review the cash balance plan. They recommended that CIGNA "[p]ublish case studies (positive and negative) and expect to be able to support employees who will be negatively impacted ASAP." Ex. 106, at D11936. The focus group also urged CIGNA to "[s]how illustrations that 'prove' small lump sums will yield equivalent benefits in the future (a lot of disbelief among managers about the way we handle data)." *Id.* Along the same lines, they noted, "General reaction to HR support is bad – too many examples of how poor the communications from HR have been in the past; low degree of reliance on information from the division." *Id.* CIGNA did not adopt either suggestion. The managers' concerns were borne out by the disclosures produced by CIGNA, as made clear by the responses to a

questionnaire attached to the December 1997 Retirement Kit that asked, "What additional information would you like CIGNA to provide?" Employee responses included:

- "I don't understand why CIGNA is not providing the details instead of saying trust me. Disclose details." Ex. 107, at SuppD1601.
- "More specific detail re: calculation of lump sum." *Id.* at SuppD1604.
- "CIGNA should plug in the individual employee's actual percentage, salary and points making the same general assumptions and project the retirement under the old and new plan." *Id.*
- "Show me the math on the old vs. new. Did I win or lose? Since I have not been told I must assume I have lost. Please prove if otherwise." *Id.* at SuppD1605.
- "An actual projection for retirement based on my exact income and time with CIGNA projected to age 65." *Id.*
- "If this was a benefit enhancement, actual individual comparisons would have been projected for each plan to show improvement. Our pension plan has been reduced but claims to be improved – integrity?" *Id.* at SuppD1606.
- "Comparison to old pension plan i[.]e. dollar amount i[.]e. would lump sum distribution buy an annuity comparable to old pension plan?" *Id.*
- "I have read the information and studied the examples; however, I am not sure how/what

impact this will have on me. I trust CIGNA will be distributing individual specific[s] in the future." *Id.*

- "A comparison for me personally of my benefit at retirement, given identical assumptions, under each plan[;] as I see it, unless the interest rate under the new plan exceeds 7% consistently, my benefit will turn out to be less than what I would have received under the old plan." *Id.* at SuppD1607.
- "How much I accrued under the old program that will be transferred to the new and the real reason CIGNA made this change." *Id.*
- "This was useless information. I would like specific information regarding what I can look forward to as a retirement income. Am I better off before or after the changes in 1998? I certainly could not tell by this information." *Id.* at SuppD1609.

Despite these requests for further information, and the wealth of evidence indicating that CIGNA was well aware of the true effects on the rate of benefit accrual likely to result from the shift to Part B, CIGNA chose not to inform its employees about those effects in order to ease the transition to a less favorable retirement program. In fact, CIGNA explicitly instructed Mercer, the consulting company that helped CIGNA produce the 1997 Newsletter and 1998 Retirement Kit, "not to compare the old to the new plans" in those documents. Ex. 117, at SuppD1548; *see also* Ex. 29, at 2. In an internal email, David Durham, CIGNA's Assistant Vice-President of Global Benefits, wrote, "We continue to focus on NOT providing employees before and after

samples of the Pension Plan changes." Ex. 119, at D11708; *see also* Ex. 120, at D020529 (internal request by CIGNA employee for "comparison/projection of old/new benefits," which the benefits counselor told her "we don't do"); Ex. 121 (email from Mr. Beltz to CIGNA actuaries), at D021235 ("Please do not perform any 'hypothetical' or 'what if' calculations for any pension benefit accruals for which the employee is not currently or could not in the future be an eligible plan participant. If a participant has a frozen pension benefit, please do not conduct any pension calculation that projects future growth in any frozen benefit."). Mr. Arko confirmed at his deposition that "as a general rule the policy was that employees would not be provided with comparisons between their benefits under the old plan and the new plan." Ex. 239 (Arko Dep.), at 238:10-13.

The reason for this reticence becomes clear in light of several internal CIGNA documents, which highlight CIGNA's desire to "[q]uickly dispel perceptions of 'take aways'" and "focus on the potential additional benefits." Ex. 128 (discussion points for meeting of division presidents), at D14872; *see also* Ex. 117 (materials prepared for August 1997 meeting with Mercer), at SuppD1544 (same); Ex. 129 (materials prepared for September 12, 1997 project planning meeting with Mercer), at SuppD1897 (same). The risk of an adverse employee reaction should the true magnitude of the reductions in the rate of future benefit accrual some plan participants would experience was real; in September 1997, several articles began to appear on cash balance conversions at other companies, and in some cases, complaints by employees resulted in partial or complete rollbacks of the proposed changes. *See* Ex.

130 (*Wall Street Journal* articles, with titles including "Pension War Is Breaking Out As Deloitte Workers Study Plan," "Pension-Plan Controversy Escalates As IBM Gives In to Employee Anger," and "'Cash Balance' Saves Millions, Hides Pitfalls From Workers"); Ex. 131. CIGNA's strategy proved successful at avoiding a similar revolt within the company, and in 1999, Mr. Meyn reported to the Board of Directors that "CIGNA's Cash Balance plan has been very well received by CIGNA employees (employee survey ratings up 15 percentage points) and has not generated notable controversy." Ex. 47, first page of attachment. A 1998 Interoffice Memo reported, "Unlike some employers instituting these plans, we have avoided any significant negative reaction from employees." Ex. 133, at SuppD1566. And in an email dated March 13, 2000, Mr. Meyn wrote, "Our Jan 1998 introduction of the plan did not set off any significant rumblings at CIGNA, and things remain quiet. . . . Here are the materials which would be sent to employees soon after any negative press for CIGNA on this topic." Ex. 124.

Taking all of this information into consideration, the Court concludes that CIGNA was aware of the significant reduction in the rate of future benefit accrual that would affect at least a substantial proportion of its employees as a result of the transition to Part B, that CIGNA wished to avoid the employee backlash likely to result from a thorough discussion of these aspects of Part B, and that CIGNA sought to negate the risk of backlash by producing affirmatively and materially misleading notices regarding Part B. As a result, its § 204(h) notice failed to meet ERISA's stringent standards.

Summary of Material Modifications and Summary Plan Descriptions. The principal

disclosures ERISA requires plan administrators to provide are Summaries of Material Modifications and Summary Plan Descriptions.[33] ERISA § 102 describes the requirements for SPDs and SMMs:

> The summary plan description shall include the information described in subsection (b) of this section, shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in

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[33] CIGNA argues that Plaintiffs' claim regarding the allegedly defective SMM is not properly before the Court. *See* Defs.' Post-Trial Brief [doc. # 251], at 99. Although Plaintiffs' Third Amended Complaint [doc. # 165] refers only to SPDs, the Court's Order Under Federal Rule 23(c)(1)(B) includes language referring to both SPDs and SMMs. *See* Order [doc. # 241], at 4. Additionally, as Plaintiffs point out, the regulations regarding the content of SMMs and SPDs is virtually identical, *see* Pls.' Post-Trial Reply Brief [doc. # 254], at 64; the only material difference between the two relates to timing, and Plaintiffs have not claimed that CIGNA's SMM was defective due to tardiness. Further, the Retirement Kit, which CIGNA identifies as an SMM, contains allegedly inaccurate statements found almost verbatim in the SPD. Finally, and perhaps most importantly, CIGNA relies partly on the Retirement Kit as having provided notice of the provisions of Part B to plan participants. In light of all these facts, the Court holds that Plaintiffs' SMM claim is properly a part of this case.

> accordance with section 1024(b)(1) of this title.

29 U.S.C. § 1022(a). Subsection (b), which lists the administrative and substantive information to be included in SPDs (and changes to which must be noticed in SMMs), includes requirements ranging from "the name and address of the person designated as agent for the service of legal process" to "the plan's requirements respecting eligibility for participation and benefits," "a description of the provisions providing for nonforfeitable pension benefits," and "circumstances which may result in disqualification, ineligibility, or denial or loss of benefits." 29 U.S.C. § 1022(b). The administrator must provide an updated copy of the plan's SPD to participants every five years if there have been intervening amendments to the plan, and otherwise every ten years. *See* 29 U.S.C. § 1024(b)(1). An SMM detailing any amendments must be distributed no later than 210 days after the end of the plan year in which the amendment was adopted. *See id.*[34] In assessing the

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[34] "The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, every fifth year after the plan becomes subject to this part an updated summary plan description described in section 1022 of this title which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period this sentence shall not apply.... If there is a modification or change described in section 1022(a) of this title (other than a material reduction in covered services or benefits provided in the case of a group health plan ...), a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan." 29 U.S.C. § 1024(b)(1).

adequacy of an SPD or SMM, a court should "consider the document as a whole." *See Estate of Becker v. Eastman Kodak Co.*, 120 F.3d 5, 8 (2d Cir. 1997).

As the extent and detail of the regulations governing SMMs and SPDs make clear, these documents are considered essential in informing employees of their rights under employers' pension plans. For example, the regulation on the style and format of SPDs states in no uncertain terms:

> The format of the summary plan description must not have the effect [of] misleading, misinforming or failing to inform participants and beneficiaries. Any description of exception[s], limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure or otherwise made to appear unimportant. Such exceptions, limitations, reductions, or restrictions of plan benefits shall be described or summarized in a manner not less prominent than the style, captions, printing type, and prominence used to describe or summarize plan benefits. The advantages and disadvantages of the plan shall be presented without either exaggerating the benefits or minimizing the limitations.

29 C.F.R. § 2520.102-2(b). Further, "[c]onsideration of these factors will usually require the limitation or elimination of technical jargon and of long, complex sentences, the use of clarifying examples and illustrations, the use of clear cross references and a table of contents." 29 C.F.R. § 2520.102-2(a). As with § 204(h) notices, SMMs and SPDs need only be

provided to those participants and beneficiaries actually affected by the changes made, *see* 29 C.F.R. § 2520.104b-4(c), and different SPDs may be prepared for different groups of participants, including only the information relevant to that group. *See* 29 C.F.R. § 2520.102-4. Finally, an SMM need not be provided if the material modifications are described in an SPD that is published within the 210-day window otherwise applicable to SMMs. *See* 29 C.F.R. § 2520.104b-3(b).

Importantly, the Second Circuit has held that in addition to describing the individual provisions of the retirement plan and their import, an employer must also describe the interaction among those provisions if the result is likely to be material to plan participants. *See, e.g., Chambless v. Masters, Mates & Pilots Pension Plan*, 772 F.2d 1032, 1040 (2d Cir. 1985) (holding would-be SMM/SPD inadequate because it did not explain "the full import of the interaction of the wage-related provision and the Amendment for someone in Chambless' position"); *Wilkins v. Mason Tenders Dist. Council Pension Fund*, 445 F.3d 572, 584 (2d Cir. 2006) ("Here, the Fund's SPD does not even mention the Policy, let alone explain its full import . . . . Obviously, it falls short of the high standards of clarity and completeness to which SPDs are held."); *Frommert*, 433 F.3d at 260 (requiring an SPD to "set out in full" the mechanics of a purported amendment to the plan).

Turning now to Plaintiffs' claims, the first point of concern regarding the SMM and SPDs relates to the disclosure of the possibility of wear away. The Court finds that CIGNA's disclosures were deficient in this respect. First of all, CIGNA admits that it nowhere informed its employees that they might not

be accruing benefits under Part B, despite Mr. Sher's testimony that it would have been "predictable and known to CIGNA" that "opening balances for some sizeable group of employees" "would be less than their protected benefit under the old plan." Trial Tr. 1029:21 to 1030:22. Nevertheless, CIGNA argues that a disclosure of the potential for wear away was unnecessary for a variety of reasons: first, that wear away was an unpredictable, "idiosyncratic contingency"; second, that wear away was not the result of any one plan provision but rather the potential result of interactions between several plan provisions and unforeseeable circumstances such as future interest rates; and third, that wear away could only have affected a small number of plan participants. *See* Defs.' Post-Trial Br. [doc. # 251], at 67, 70, 72, 77.

CIGNA is correct that the Second Circuit "do[es] not require an ERISA fiduciary to be perfectly prescient as to all future changes in employee benefits." *Mullins v. Pfizer, Inc.*, 23 F.3d 663, 669 (2d Cir. 1994). Further, "an SPD need not anticipate every possible idiosyncratic contingency that might affect a particular participant's or beneficiary's status." *Becker*, 120 F.3d at 9 (quotation marks omitted). However, the Second Circuit has taken a relatively narrow view of what constitutes an "idiosyncratic contingency." In *Becker*, for example, the court denied that "the possibility of death in the period between the election of retirement and the effective date of retirement is such a remote or 'idiosyncratic' contingency" that Kodak could omit from its SPD information regarding the effect of such a circumstance on a plan participant's benefits. *Id.* Similarly, in *Mullins*, the court ruled against Pfizer, holding that the company could not deny the

upcoming implementation of improved severance benefits when asked by employees considering early retirement. As the court stated, "[W]e [do not] require a fiduciary to disclose its internal deliberations or to interfere with the substantive aspects of the collective bargaining process," but "[w]e do, however, hold that when a plan administrator speaks, it must speak truthfully." *Mullins*, 23 F.3d at 669 (quotation marks, citation, and alteration omitted).

The circumstances in which courts have applied the so-called "duty of clairvoyance" exception, on the other hand, tend to be extreme. In *Hudson v. General Dynamics Corp.*, 118 F. Supp. 2d 226 (D. Conn. 2000), for example, the court held that the company was not required to have provided information to one of the plaintiffs regarding later-implemented changes to the retirement plan. As the court wrote,

> Information that would have provided the factual underpinning for such a belief, [namely, the introduction of the changes to the plan,] however, *was not available* at the time of his inquiry, and to find the employer liable for failing to provide it would impose no less than the duty of clairvoyance specifically rejected in *Mullins*, 23 F. 3d at 669.

Hudson, 118 F. Supp. 2d at 263 (emphasis added). But the same could not be said regarding the later inquiries of other plaintiffs:

> [The pension adviser's] noncommittal and non-factual responses to beneficiary questions were therefore not accurate, because she did know more than nothing,

> consideration of a golden handshake was certainly more than a rumor, and she had also heard the [company's] attorney admonish the [Joint Planning Process Committee] regarding the legal precautions the company felt necessary related to the timing and content of any disclosures.

Id. at 247-48. Another example of an "idiosyncratic contingency," to which the Second Circuit has cited, is found in *Lorenzen v. Employees Retirement Plan of the Sperry & Hutchinson Co.*, 896 F.2d 228 (7th Cir. 1990). There, Mr. Lorenzen was taken off of life support and died mere days before his retirement, and as a result, his widow's benefits were significantly reduced. The Seventh Circuit indicated that it would not have required Sperry & Hutchinson to have provided information regarding such an occurrence in its SPD, because otherwise, "the summaries would be choked with detail and hopelessly confusing." *Id.* at 236. As these cases indicate, however, companies may avoid liability for failing to provide information only when the beneficiary's circumstances are truly idiosyncratic.

In this case, however, wear away was both a structural phenomenon and one that CIGNA could, and did, predict, despite the fact that it resulted from the interaction of several plan provisions and falling interest rates.[35] As a matter of fact, various choices made by CIGNA in structuring the opening account

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[35] CIGNA demonstrated its ability to discuss the effect of changes in interest rates on participants' benefits, even if the rate changes themselves were difficult to predict, in its 2006 Part B SPD, which included a section entitled, "Effect of interest rates on your annuity payments." *See* Ex. 218, at 13.

balances under Part B practically ensured that wear away would occur if interest rates fell. A necessary precondition to wear away was CIGNA's use of a "greater of A or B" system, because if CIGNA had chosen an "A plus B" approach instead, there would be no catch-up period or wear away effect at all. Additionally, CIGNA chose to exclude all early retirement benefits but the Preserved Spouse's benefit from the opening account balances. *See* Ex. 1 (Part B), at D00278-D00279 (§ 1.28); Ex. 508 (Retirement Kit), at D00721. While this decision was legally permissible, the unavoidable effect was that employees who had accrued such benefits under Part A would have an opening account balance significantly smaller than their protected minimum benefit (if taken as an annuity). CIGNA also applied a pre-retirement mortality discount to the Part A benefits when establishing the opening account balances. *See* Ex. 508 (Retirement Kit), at D00720. This decision, too, was legally permissible, but it too had the inevitable result of shrinking the opening account balance in comparison to the annuity previously available under Part A.[36] Finally, CIGNA used an interest rate of approximately 6.5% to calculate the present value of the opening account balances (approximately 5.5% in the case of certain

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[36] Indeed, in additional to being legally permissible, even Plaintiffs' expert, Mr. Poulin, agreed that in this case the use of such a mortality discount was appropriate. This was so because under Part A, benefits were only payable if the employee survived until commencing benefits, whereas under Part B, the benefits were payable regardless. Thus, the pre-retirement mortality discount applied in establishing the opening account balances reflected the life-insurance value included under Part B that did not exist under Part A. *See* Trial Tr. 481:1 to 484:7.

more senior employees). *See id.* at D00719-D00721. When interest rates later fell, the account balances were unable to grow quickly enough to "repurchase" the value of the plan participants' Part A annuities.[37] Although CIGNA appears to claim that the decline in interest rates that followed the implementation of Part B was entirely unexpected and unpredictable, interest rates had already fallen by over 100 basis points between 1997 and 1998, when CIGNA published the first Part B SPD. *See* Pls.' Post-Trial Reply Br. [doc. # 254], at 38.

Thus, the Court finds that CIGNA had a duty to inform plan participants of the possibility of wear away in its notices and disclosures regarding Part B. The fact that wear away might not have been intentional or the result of a single plan provision is irrelevant; CIGNA created a pension plan that was structurally susceptible to the wear away effect, and should have known, given the current state of interest rates, that further declines were of sufficient likelihood that wear away needed to be disclosed. The possibility of wear away was certainly a material fact regarding Part B, as some CIGNA employees' pension benefits did not grow for several years as a result of the phenomenon. Treasury regulations require that "[a]ny description of exception[s], limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure or otherwise made to appear unimportant." 29 C.F.R. § 2520.102-2(b). By ignoring the risk of wear away, CIGNA did exactly that.

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[37] The benefit accrual rate under Part B also played a role in the wear away effect, for had the rate been high enough, it might have offset even the falling interest rate.

Further supporting the Court's conclusion is evidence indicating that CIGNA was in fact aware of the possibility of wear away. As noted above, CIGNA's expert testified that it would have been "predictable and known to CIGNA" that "opening balances for some sizeable group of employees" "would be less than their protected benefit under the old plan." Trial Tr. 1029:21 to 1030:22. Mr. Sher also agreed with the Court that "it [would] be typical that [he] or the consultants in the company would try to make some estimates of wearaway for the employee population and then discuss potential mitigative solutions." Trial Tr. 1019:7-11. In addition, Andrew Hodges, CIGNA's Chief Actuary for Projects, testified at his deposition that he became aware of the possibility of wear away upon his examination of the proposal for Part B. He agreed that the interest rate used to calculate the opening account balances, as well as the pre-retirement mortality discount, could contribute to a wear away effect. *See* Ex. 241 (Hodges Dep.), at 93:25 to 95:9. Ms. Amara testified that at a going-away party for other CIGNA employees, Mark Lynch, CIGNA's Chief Actuary, told her, "Jan, you would be really sick if you knew the wearaway factors they were using with your benefit." Trial Tr. 34:15-17. Finally, an internal memorandum from CIGNA's Vice-President for Employee Benefits in January 2002 admitted that "[u]sing the present value of normal retirement age benefits results in a significant 'wear away' period during which time employees accrue no additional benefits with future service." Ex. 40 at 28635.

With respect to CIGNA's claim that it was not required to provide notice of the possibility of wear away because only a small number of employees

were affected, the Court holds that such a claim could bar liability only if CIGNA were able to show that the number of employees affected were *de minimis*.[38] *Cf.* 29 C.F.R. § 2520.104b-4(c) ("A summary description of a material modification . . . need not be furnished . . . if the material modification or change *in no way* affects such retired participant's, vested separated participant's, or beneficiary's rights under the plan.") (emphasis added). This is a showing CIGNA has not made, and which the Court does not believe it could make, especially in light of, for example, Mr. Sher's testimony that the opening account balances of "some *sizeable group* of employees" would be less than their Part A benefit. Trial Tr. 1029:21 to 1030:22 (emphasis added). In this respect, the Court notes that CIGNA failed to produce at trial any evidence regarding the exact number of employees likely to have been affected by wear away. Further, the Court believes that the dramatic effect that wear away had on the pension benefits of certain named Plaintiffs, in some cases causing them to accrue no

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[38] CIGNA also appears to claim that because early retirement benefits were only available as part of an annuity, the wear away of those benefits would only affect those employees who chose an annuity. Because most participants in the Plan chose a lump sum, CIGNA argues that it was not required to provide information regarding wear away. *See* Defs.' Post-Trial Brief [doc. # 251], at 78-79. However, CIGNA had, but chose not to provide, information regarding the number of plan participants who chose an annuity versus a lump sum. For that reason, the Court finds that CIGNA failed to prove that only a *de minimis* number of employees potentially affected by the wear away of early retirement benefits chose an annuity rather than a lump sum.

additional benefits at all from the time of Part B's implementation to their retirement, weighs against determining that the effects of wear away were sufficiently unimportant not to require attention in CIGNA's notices.

Even assuming, however, that CIGNA did not have an affirmative duty to inform plan participants regarding wear away, it nevertheless could not provide, instead of no information, materially misleading statements. Yet that is just what CIGNA did. For example, the 1997 Newsletter touts the fact that "[t]he new plan provides steadier benefit growth throughout your career." Ex. 516, at D00610. The Retirement Kit states, "As of [January 1, 1998], the benefits you have earned under the Pension Plan will be converted to an opening account balance in the new plan. At the same time, you *will begin earning* retirement benefits under the new plan." Ex. 508, at D00718; *see also id.* at D00726 ("You will earn no further benefits under the Pension Plan after December 31, 1997. Starting in 1998, you will earn benefits under the new plan."). Similarly, in its 1998 SPD, CIGNA states that plan participants' quarterly statements will show "the amount of accumulated credits in your account. You'll see that amount *continue to grow* every year you are with CIGNA." Ex. 505, at D00826 (original emphasis omitted and emphasis added); *see also* Ex. 506 (1999 SPD), at D00623 (same). Later in that same document, CIGNA claims that Part B features an "account in your name that grows each year with benefit and interest credits," and the "ability to earn retirement benefits *throughout your career*." Ex. 505 (1998 SPD), at D00826 (emphasis added); *see also* Ex. 506 (1999 SPD), at D00623 (same). Directly under the heading "How Your Account Grows," CIGNA states,

"Each dollar's worth of credit is a dollar of retirement benefits payable to you after you are vested. Under the plan, your benefit will grow steadily throughout your career as credits are added to your account." Ex. 505 (1998 SPD), at D00828; *see also* Ex. 506 (1999 SPD), at D00624 (same); Ex. 508 (Retirement Kit), at D00740 (same).

CIGNA argues that

> the fact that the SPD told Plan participants that they might receive their protected Minimum Benefit if it was higher than their cash balance benefit was a clear indication that a participant's prior protected benefit might be greater than his or her account balance, and that there might be a period of time during which there would be no increase in his or her overall pension benefit.

Defs'. Post-Trial Br. [doc. # 251], at 64. Thus, CIGNA contends that plan participants received all the notice of wear away that was required. The Court disagrees. Nowhere in any of the notices is the phenomenon of wear away, or any substantive equivalent, discussed or described.[39] Further, in

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[39] Recently, a colleague of the Court's decided a § 204(h) notice was satisfactory in the face of a claim that wear away was not adequately disclosed, but the situation there was very different. *See Custer*, 2008 WL 222558. In *Custer*, for example, SNET provided a § 204(h) notice that explained that a participant's guaranteed minimum benefit would be greater than the cash balance account for three to four years, and that retiring participants would receive their minimum benefits during that period. In addition, there was no evidence that the company went one step further and made positive claims about benefits under the new plan, as did CIGNA here.

light of all of the above-mentioned statements that unequivocally state that all plan participants will begin accruing benefits under Part B beginning on January 1, 1998, the Court finds that plan participants would reasonably believe that wear away was not a component of, or a likely result of, Part B. As CIGNA's counsel admitted to the Court, he could point to no statement in the notices that told employees "they were actually not earning retirement benefits." Trial Tr. 597:21 to 598:25. The indirect reference to the protected minimum benefit to which CIGNA now points is simply inadequate.

The Court now turns to the disclosure of which benefits accrued under Part A would be preserved in the opening account balance or as part of the protected minimum benefit established under Part B. More specifically, Plaintiffs argue that CIGNA's disclosures were faulty because they led plan participants to believe that all of their Part A accrued benefits, including their early retirement benefits, would be protected. Part B explicitly specifies that if an employee eligible for early retirement benefits under Part A chooses an annuity, rather than the lump sum distribution, that employee will receive *all* the early retirement benefits available, including "any Social Security supplement which would have been payable under Part A with respect to the Participant's Minimum Benefit." Ex. 1 (Part B), at D00309 (§ 7.3(b)). These additional early retirement benefits were, as noted previously, excluded from the lump sum distribution. *See id.* (§ 7.3(c)) ("This section 7.3 *shall not apply* to any Participant who elects to receive his Accrued Benefit in the form of a lump sum distribution . . . .") (emphasis added).

Examining the statements CIGNA made about accrued benefits under Part A, however, the Court concludes that Plaintiffs reasonably could have believed that their early retirement benefits were fully protected as part of their minimum benefit and/or their opening account balance under Part B. For example, in its November 1997 Newsletter, CIGNA stated simply, "If you earned *a benefit* under the current Pension Plan, the lump sum value of that benefit as of December 31, 1997, will be transferred to your account as your opening balance." Ex. 516, at D00608 (emphasis added). In the December 1997 Retirement Kit, CIGNA reiterated, "*Any benefits* that you have earned under the Pension Plan through December 31, 1997, are fully protected, and their value will be reflected in your new plan balance." Ex. 508, at D00718 (emphasis added); *see also id.* at D00726 ("If you are eligible for the new CIGNA Retirement Plan, all of your benefits earned under the current Pension Plan through December 31, 1997, will remain yours."); *id.* at D00740 (same). In its September 1999 SPD, CIGNA wrote, "If you were an employee on December 31, 1997, or rehired after 1997, *any benefit* you earned under the Pension Plan through December 31, 1997 was converted to an opening account balance in this Pension Plan." Ex. 506, at D00624 (emphasis added); *see also* Ex. 505 (1998 SPD), at D00828 (same). Later in the 1998 SPD, CIGNA assured its employees that "[i]f you participated in the Pension Plan before 1998, your old plan benefits were converted to an opening account balance in this Plan. Your final Plan benefits cannot be less than your old plan benefits on December 31, 1997." Ex. 505, at D00838 (emphasis omitted). In light of these documents and their unqualified references to "old plan benefits," it was

reasonable for CIGNA employees to conclude that all of their early retirement benefits were included in the protected minimum benefit, and that the employees would receive the full value of those benefits, regardless of whether they chose an annuity or a lump sum.[40] Thus, the notices were not written in a manner calculated to be understood by the average plan participant.

The effect of these misleading statements was compounded by CIGNA's failure to inform its employees when the annuity option had a greater present value than the lump sum option, despite its representations that it would do so. *See, e.g.*, Ex. 505 (1998 SPD), at D00838 ("Your final Plan benefits cannot be less than your old plan benefits on December 31, 1997. *If this minimum benefits rule applies to you, you'll be notified by the Retirement Service Center when you request a distribution.*") (original emphasis omitted and emphasis added). It is true that the 1997 Retirement Kit stated that "[y]our normal pension benefit is an annual payment made to you for life, beginning when you turn age 65," Ex. 508, at D00719, and that some Part A opening balances "will be based on the present value of [the participant's] age 62 early retirement benefit, rather than on the present value of [the] age 65 normal retirement benefit." *Id.* at D00721. However, the Court finds that in light of apparently

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[40] It was not until CIGNA issued its revised Summary Plan Description for Part B in July 2006 that CIGNA informed its employees in a comprehensible manner of the restrictions on the availability of early retirement benefits if an employee chose a lump sum distribution. *See* Ex. 731, at SuppD025662-SuppD025664.

contradictory statements within the Retirement Kit itself, to the effect that *any* benefits previously accrued would be protected, *see id.* at D00718, and the lack of any indication in the later, authoritative SPDs that early retirement benefits would not be included in the opening account balances, these statements are not enough to prevent the disclosures as a whole from being statutorily inadequate. For all of these reasons, then, the Court finds that CIGNA's SMM and its SPDs, as well as its § 204(h) notice, were deficient and in violation of ERISA's requirements.

C. Likely Harm. Perhaps tellingly, CIGNA's primary argument in response to the disclosure claims is that, even assuming that the notices and disclosures were statutorily defective, Plaintiffs are nevertheless not entitled to relief because they have failed to demonstrate injury. The Second Circuit identified likely harm as the appropriate standard of injury in *Burke v. Kodak Retirement Income Plan*, 336 F.3d 103 (2d Cir. 2003), holding that

> a prejudice standard is more consistent with ERISA's objective to protect the employee against inadequate SPDs. A rule requiring detrimental reliance imposes an insurmountable hardship on many plaintiffs, . . . and such a rule hardly advances the Congressional purpose of protecting the beneficiaries of ERISA plans by insuring that employees are fully and accurately apprised of their rights under the plan.

Id. at 112 (quotation marks and alterations omitted); *see also Tocker v. Philip Morris Cos., Inc.*, 470 F.3d 481, 488 (2d Cir. 2006). Thus,

> [c]ognizant of ERISA's distribution of benefits, [the Second Circuit] require[s], for a showing of prejudice, that a plan participant or beneficiary was *likely* to have been harmed as a result of a deficient SPD. Where a participant makes this initial showing, however, the employer may rebut it through evidence that the deficient SPD was in effect a harmless error.

Burke, 336 F.3d at 113. The court chose to employ a "likely harm" standard in order to avoid the imposition of "harsh common law principles to defeat employees' claims based on a federal law designed for their protection." *Id.* In sum, "[t]he result is a presumption of prejudice in favor of the plan participant after an initial showing that he was likely to have been harmed." *Id.* at 113-14.

In line with this protective approach, the Second Circuit has emphasized the broad nature of "likely harm." As the court explained in *Frommert*, "[a]s a result [of the inadequate notices], [the plaintiffs] were deprived of the opportunity to take timely action in response to the purported 'amendment.' Such action might have included seeking injunctive relief, altering their retirement investment strategies, or perhaps considering other employment." 433 F.3d at 266; *see also Laurent*, 448 F. Supp. 2d at 547 (applying *Frommert*). Even the inability to bring a timely lawsuit itself can constitute likely harm if it results from misinformation provided in notices about the plan. In *In re Citigroup*, 470 F. Supp. 2d 323, for example, the court rejected the defendants' argument "that the only consequence [of the allegedly deficient § 204(h) notices] here was plaintiffs' failure to commence this litigation sooner, which hardly constitutes

prejudice." *Id.* at 339 (quotation marks omitted); *see also Richards*, 427 F. Supp. 2d at 172-73; *Manginaro*, 21 F. Supp. 2d at 296-97 (plaintiffs prejudiced by SPD's failure to inform them of the plan's two-year statute of limitations on certain claims).

In light of the expansive view the Second Circuit has taken of likely prejudice, the Court must reject CIGNA's claim of harmless error. More specifically, CIGNA asserts lack of prejudice for three reasons: (1) none of the named Plaintiffs left CIGNA as a result of perceived deficiencies in Part B or the related notices and disclosures; (2) Plaintiffs received enough information about their benefits under Part B from other sources, including the opening account statements and the Total Compensation Reports, that any defects in the ERISA-required notices and disclosures were cured; and (3) even if Plaintiffs had received all of the information they claim should have been included in the notices and disclosures, no Class member's benefits under Part B would have changed. The second of these three rationales was discussed in the prior section regarding § 204(h) notices, and the Court will not repeat itself here. Suffice to say, the Court does not consider the additional materials provided by CIGNA adequate either to cure the defects in the notices or to transform any possible prejudice into harmless error.[41]

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41 However, this determination of likely harm does not mean that the Court has determined what remedy, if any, is appropriate for the violations the Court has found, and further briefing will be required on that subject. It may be that CIGNA's evidence regarding the lack of impact the faulty disclosures had on employees will go to remedy, even though

The Second Circuit has explicitly rejected the claim that an employee who remains at his job necessarily has failed to show that defects in disclosures regarding plan provisions resulted in likely harm. In *Frommert*, for example, the court examined Xerox's use of a "phantom offset"[42] in calculating the retirement benefits of rehired employees, which resulted in substantially lower benefits. The district court had held that the plaintiffs failed to prove any injury, because all the employees had remained with Xerox despite later discovering the existence of the phantom offset and its dramatic effect on their retirement benefits. The Second Circuit emphatically rejected this line of reasoning, stating that "[i]mposing a requirement that plan participants must show actual prejudice from a challenged plan amendment by terminating their employment imposes an unduly harsh burden on dissatisfied plan participants." 433 F.3d at 267. Instead, the court noted that the absence of any mention of the phantom offset from the plan-related documents provided to the employees "likely, and quite reasonably, led plan participants to believe that it was not a component of the Plan." *Id.* This

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[Footnote continued from previous page]

that evidence was insufficient to rebut Plaintiffs' showing of likely harm.

42 The "phantom offset" was so called because Xerox not only deducted the lump sum these employees had taken when they first left the company in calculating their retirement benefits upon rehire, but also deducted hypothetical interest that the lump sum would have accrued had it remained in Xerox's pension plan for the years in which the rehired employees worked for another company. *Frommert*, 433 F.3d at 260.

erroneous belief, fostered by inaccurate notices regarding the terms of Xerox's retirement plan, constituted likely harm.

Courts have also rejected the idea that a plaintiff has failed to show likely harm if he cannot prove that he would have received a larger benefit were the notices accurate.[43] For example, the district court in *Layaou v. Xerox Corp.*, 330 F. Supp. 2d 297 (W.D.N.Y. 2004), on remand from the Second Circuit, explicitly rejected Xerox's argument that Layaou was unable to show likely harm because "there is nothing that he could have done differently that would have resulted in his receiving a higher retirement benefit." 330 F. Supp. 2d at 302. Relying on *Burke*, the district court explained that such a test would essentially re-impose the detrimental reliance standard eschewed by the Second Circuit.[44] *Id.*

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[43] The court in *Sheehan v. Metropolitan Life Insurance Co.*, 368 F. Supp. 2d 228, 262 (S.D.N.Y. 2005), however, interpreted *Layaou v. Xerox Corp.*, 330 F. Supp. 2d 297 (W.D.N.Y. 2004), to construe *Burke* as holding that "in an ERISA action, likely prejudice to a plaintiff will be presumed if, as the result of an SPD deficiency, he was not aware of the need to take an action within his control (submitting an affidavit, filing a law suit) which would have avoided the restriction on eligibility for benefits, and consequently failed to take that action." The court ruled against the plaintiff in that case, finding that he would have been ineligible for benefits even under the SPD provided to him by his employer, and regardless of any alleged deficiencies. *Id.* at 262-63.

[44] The Second Circuit also examined the likely harm standard in *Wilkins*, 445 F.3d 572. Certain language in that opinion could be read as reintroducing a detrimental reliance requirement. However, the court did not explicitly restrict *Burke* or *Frommert*, and the Court will not presume *Wilkins* intended to do so implicitly.

Similarly, the cases in which courts have found a rebuttal of the presumption of likely harm serve only to emphasize the expansive approach to likely harm adopted in this Circuit. For in each of them, the court found actual knowledge on the plaintiff's part of the requirement omitted from the SPD. In *Park v. Trustees of the 1199 SEIU Health Care Employees Pension Fund*, 418 F. Supp. 2d 343 (S.D.N.Y. 2005), for example, Mrs. Park had failed to fill out and submit a lost spouse waiver, which was required in order to name someone other than her spouse as the beneficiary under her pension plan. As the court noted, "the lost spouse waiver was set forth in the Fund's Plan Document which was attached to and distributed with the Fund's SPD, which the plaintiffs conceded Mrs. Park possessed." *Id.* at 354. Notably, plaintiffs were "unable to show that Mrs. Park was 'likely prejudiced' because plaintiffs admit that Mrs. Park was sufficiently aware of the lost spouse waiver to seek to invoke it." *Id.*; *see also Weinreb v. Joint Diseases Orthopaedic Inst.*, 404 F.3d 167, 171-72 (2d Cir. 2005) ("Where a plan administrator fails to fulfill its statutory duty of furnishing an SPD, but where the evidence shows that the claimant had actual knowledge of the requirement at issue, any error is necessarily harmless."); *Pastore v. Witco Corp. Severance Plan*, 388 F. Supp. 2d 212, 221 (S.D.N.Y. 2005) (same).

Applying the *Burke* and *Frommert* standard to the facts of this case, the Court holds that Plaintiffs have met their burden of showing likely harm and prejudice. As in *Frommert*, the notices provided by CIGNA "likely, and quite reasonably, led plan participants to believe" that wear away was not a likely result of the transition to Part B, that the full value of the accrued benefits under Part A, including

early retirement benefits, would be included in the opening account balances, and that the accrual rates for both short- and long-term employees under Part B were at least roughly equivalent to those under Part A. 433 F.3d at 267; *see also Richards*, 427 F. Supp. 2d at 173. Also as in *Frommert*, CIGNA's successful efforts to conceal the full effects of the transition to Part B "deprived [plaintiffs] of the opportunity to take timely action in response to the purported 'amendment,'" 433 F.3d at 266, whether that action was protesting at the time Part B was implemented, leaving CIGNA for another employer with a more favorable pension plan, or filing a lawsuit like this one. As Ms. Amara testified, had she been told during her rehire interview that she would not be earning additional retirement benefits during a wear away period, she could have "negotiated for a higher salary," "looked and talked to other employers," or stayed at her previous position. Trial Tr. 45:16-24.

VI. Rehire Rule

Some employees who had previously worked for CIGNA and had left the company's employ before Part B became effective, later returned to CIGNA. These employees were referred to as "rehires" during the litigation. As it developed, there were a considerable number of rehires at CIGNA. Originally, CIGNA intended to return the employees who had left to Part A when they came back. However, CIGNA decided to amend this "rehire rule" to provide that all employees hired by CIGNA after a certain date would be placed in Part B, regardless of whether they had previously accrued benefits under Part A. The result of this change meant that certain employees who were close to retirement age when they returned to CIGNA faced the possibility that, as

a result of wear away and the method by which opening account balances were established, they would accrue no further pension benefits during their remaining time with CIGNA.

In *Depenbrock*, 389 F.3d 78, a group of CIGNA employees who had left the company and subsequently been rehired claimed that the amendment to the rehire rule had not yet been formally adopted at the time of their rehire, and so they should have been placed back into Part A, rather than entering Part B. CIGNA argued that the effective date of the amendment to the rehire rule was January 1, 1998, but the Third Circuit disagreed. The court held that CIGNA's Plan permitted only written amendments, and found that CIGNA's CEO had not signed the amendment to the rehire rule until December 21, 1998. *See* 389 F.3d at 83. The court also rejected CIGNA's argument that under the doctrine of ratification, the CEO's manifested intent that the amendment be retroactively valid from January 1, 1998 should control, because such an approach would effect a retroactive reduction of the benefits that Mr. Depenbrock and others had accrued under Part A from the time of their rehire to the date of the formal amendment to Part B. *See id.* at 84. Thus, Mr. Depenbrock and other CIGNA employees, including Janice Amara, who were rehired before the formal amendment, were ordered returned to Part A. Had Ms. Amara not been returned to Part A as a result of the Third Circuit's decision, she would have faced a wear away period of many years, indeed the entire duration of her re-employment with CIGNA. *See* Ex. 4 (Supp. Poulin Decl.), ¶¶ 21-22; Ex. 32, at D028143, D028629. Although *Depenbrock* provided relief only for CIGNA employees rehired before

December 21, 1998, Plaintiffs argue here that the same result should obtain for employees rehired after that date because, they claim, CIGNA was required to send all separated, vested employees a § 204(h) notice of significant reduction in the rate of future benefit accrual and an SMM. Only then could rehired employees make an informed choice as to whether to return to CIGNA or not.

The requirements regarding § 204(h) notices, SPDs, and SMMs have been discussed above and will not be repeated here. The primary point of contention between the parties is whether separated, vested employees who were no longer accruing benefits under Part A could be considered "reasonably expected" to be affected by the amendment of the rehire rule for notice purposes, simply by virtue of the fact that they had previously had the right to be placed back into Part A upon reemployment. *See* Ex. 2 (Part A), at D00025 (§ 2.4); 63 Fed. Reg. 68678, at 68682 (Treas. Reg. 1.411(d)-6, Q&A-9) ("A plan administrator need not provide section 204(h) notice to any participant whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment . . . ."); 29 C.F.R. § 2520.104b-4(c) ("A summary description of a material modification to the plan or a change in the information required to be included in the summary plan description need not be furnished to a retired participant, a vested separated participant or a beneficiary receiving benefits under the plan . . . if the material modification or change in no way affects such retired participant's, vested separated participant's, or beneficiary's rights under the plan."). CIGNA argues that these employees, once separated from the company, were no longer accruing benefits from CIGNA, and so any future

accruals upon re-employment (whether under the original rehire rule or the less favorable amended version) could only be considered an increase, obviating any need for § 204(h) notices. Defs.' Post-Trial Brief [doc. # 251], at 97. Further, CIGNA argues that no notice was owed to separated, vested employees regarding the amendment to the rehire rule because these employees were not yet participants in Part B before their re-employment with CIGNA. *See id.* at 101-02. Under § 204(h), if notice is not due to an individual at the time of the amendment, the plan administrator need never provide a § 204(h) notice to that individual. *See* 63 Fed. Reg. 68678, at 68681-82 (Treas. Reg. 1.411(d)-6, Q&A-8); 29 C.F.R. § 2520.102-4 (no requirement to provide to a particular class of participants, such as former employees, an SPD detailing an amendment that does not affect that class). Plaintiffs counter that a determination whether the rights of a certain class of employees are likely to be affected by an amendment must be made through a contemporaneous assessment of "the relevant facts and circumstances at the time the amendment is adopted," 63 Fed. Reg. 68678, at 68681 (Treas. Reg. 1.411(d)-6, Q&A-7), and that CIGNA failed to provide any evidence that it had undertaken such an analysis. *See* Pls.' Post-Trial Brief [doc. # 247], at 92; Pls.' Post-Trial Reply Brief [doc. # 254], at 43-44.

Although Plaintiffs rely on *Frommert*, 422 F.3d 254, for the proposition that an employer must provide notice to separated, vested employees regarding a change in the methods of calculating benefits upon rehire, even after formal amendment of the plan, the Court disagrees. In *Frommert*, as described previously, Xerox began using a so-called "phantom offset" in calculating the pension benefits

of rehired employees who had taken a lump sum payout of previously-accrued benefits at the time they first left the company. The Second Circuit determined that the Xerox pension plan had not been effectively amended until the 1998 SPD was published, which "set out in full" the nature of the phantom offset and how it was actually applied in the calculation of benefits for rehired employees. *See id.* at 260. The phantom offset rule was deemed inapplicable to all those who had been rehired before the issuance of that SPD, because "[w]ithout the benefit of such information, former employees contemplating returning to Xerox were denied the opportunity to make a meaningful decision regarding whether they would accept the terms of Xerox's pension plan." *Id.* at 262; *see also id.* at 263 ("We also hold that the defendants failed to meet their obligations to provide advance notice of the amendment as required by § 204(h), meaning that the phantom account may not be applied to employees rehired prior to the issuance of the 1998 SPD.") (emphasis omitted).

However, the court then continued, "[F]or employees rehired *subsequent to the amendment of the Plan* through the 1998 SPD, the phantom account is a component of the Plan that they joined and thus may permissibly be applied to them. . . . With full notice of the phantom account's existence, these rehired employees, unlike their predecessors who lacked such information, had the opportunity to make an informed decision about taking or leaving the terms of the deal offered to them under the Plan." *Id.* at 263, 269 (emphasis added). Thus, the Second Circuit held that a valid amendment to the plan document constituted all the notice required for former employees rehired after the amendment, even

regarding rules specifically addressing that group of plan participants. As the court stated, "Unlike employees rehired before the 1998 SPD was issued, those hired after it was provided were not 'participants in the plan' at the time of the change required to be notified under § 204(h)." *Id.* at 269 n.12 (emphasis and alteration omitted). If the employees rehired after the amendment date are not "plan participants" for the purposes of § 204(h) notices, it stands to reason that neither are they plan participants for the purposes of SMMs or SPDs.

As a consequence, the Court concludes that CIGNA had no duty to provide notice of the amended rehire rule to all separated, vested employees, and was not required to provide any special notice to those rehired after December 21, 1998 – the valid amendment of Part B was itself sufficient to inform those employees of their rights under the Plan. Of course, the Court's determination that there was no violation of ERISA in CIGNA's failure to provide notice of the rehire rule specifically does not affect its determination that the notices provided to all CIGNA employees, whether rehires or not, were deficient due to their material misrepresentations regarding the mechanics of Part B.

VII. Choices Upon Retirement

ERISA requires that employers provide their employees with certain information regarding the relative values[45] of different benefit forms available

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[45] CIGNA refers to relative value as "present value," and indeed, to make a comparison between a lump sum and an annuity, one must almost invariably calculate the present value of the income stream provided by the annuity. However, for ease of reference and because the crux of Plaintiffs' claims is

at retirement, and Plaintiffs claim that CIGNA failed to comply with these regulations. Specifically, Plaintiffs assert that CIGNA was obligated to inform plan participants: (1) that the lump sum option did not include the early retirement benefits available as part of the annuity; (2) whether the annuity option for a given employee was more valuable than the lump sum option; (3) whether an employee's Part A benefits were greater than her Part B benefits; and (4) whether waiting until some future date to begin receiving benefits would result in higher benefit levels. As a result of CIGNA's alleged failure to provide this information, Plaintiffs argue that some CIGNA employees chose a lump sum distribution when an annuity would have been more valuable.

Before turning to the substantive requirements for CIGNA's election form, there are two preliminary issues the Court must address. The first and more important is Defendants' contention that the named Plaintiffs lack standing to raise these claims on behalf of the Class.[46] Defendants argue that

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[Footnote continued from previous page]

that CIGNA should have provided comparative information, the Court will use the term "relative value" here.

[46] In a similar vein, CIGNA argues that only the plan administrator, Mr. Beltz, is an appropriate defendant on this claim, as it regards defects in notices provided to plan participants. The Court has addressed this argument in the Plan Administrator section of its Opinion, and need not repeat its analysis here. For the reasons stated there, and given the lack of any indication in the record that Mr. Beltz was involved in the design of CIGNA's benefit election forms, CIGNA is an appropriate defendant on the relative value claim, at least with regards to ERISA § 502(a)(3).

Ms. Amara's relative value claim is moot now that she has been returned to Part A (and so does not face the election under Part B of a lump sum versus an annuity); that Ms. Broderick suffered no harm because she chose the annuity option, which was the most valuable option available to her; and that Ms. Glanz, in addition to not yet having made the choice between an annuity and a lump sum, is not eligible for any subsidized early retirement benefits that would only be included in an annuity. *See* Defs.' Post-Trial Brief [doc. # 251], at 112-14.[47] The class here was certified on December 20, 2002. *See* Order [doc. # 61]. At that time, Ms. Amara had not yet been returned to Part A under the *Depenbrock* decision, and Ms. Broderick did not choose the annuity option under Part B until November 2004, when CIGNA recalculated her benefits to include the Preserved Spouse's benefit that had previously been erroneously excluded. Thus, both Ms. Amara and Ms. Broderick had viable relative value claims at the

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[47] Ms. Jones testified that she chose a lump sum that was worth $80,000 less than her annuity option, but Defendants argue that she cannot serve as a class representative on this claim because she failed to exhaust her administrative remedies within CIGNA. *See* Defs.' Post-Trial Brief [doc. # 251], at 114 n.96. Regarding exhaustion, although the Second Circuit itself has not decided the issue, it has stated that "[d]istrict courts in the Second Circuit have routinely dispensed with the exhaustion prerequisite where plaintiffs allege a statutory ERISA violation." *Nechis*, 421 F.3d at 102 (quotation marks omitted). Finally, the Court notes that Defendants have had ample opportunity to raise any concerns about standing earlier in the course of these proceedings, and in fact requested additional class representatives for other claims. The Court thus does not consider Defendants' arguments a bar to its consideration of the merits of this claim.

time the Class was certified, and standing at the time of class certification is all that matters. It is well-settled that so long as a class representative has standing at the time of certification, later mootness of that plaintiff's claim does not destroy standing on behalf of the class. *See, e.g., Robinson v. Sheet Metal Workers' Nat'l Pension Fund*, – F.3d –, 2008 WL 302610, at *3 n.4 (2d Cir. 2008) ("The Supreme Court has held that the mootness of the claims of even the *only* lead plaintiff does not moot a class action. It follows *a fortiori* that the mootness of the claims of one of two lead plaintiffs does not moot the class action, so long as 'there are questions of law or fact common to the class' and 'the representative parties will fairly and adequately protect the interests of the class.'") (citations omitted) (quoting Fed. R. Civ. P. 23(a)(2), (4)); *Martens v. Thomann*, 273 F.3d 159, 173 n.10 (2d Cir. 2001) ("Generally, the moving plaintiffs are correct in stating that special standing rules exist for class representatives. Although, upon certification of a class, the class representative must have individual standing, class representatives may continue to represent a class even if their individual claims become moot.") (citation omitted) (citing *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 404 (1980), and *Sosna v. Iowa*, 419 U.S. 393, 402 (1975)).

Second, Plaintiffs urge the Court also to examine the relative value disclosures provided by CIGNA to employees covered by the *Depenbrock* decision. *See* Pls.' Post-Trial Brief [doc. # 247], at 101-02. However, this aspect of the relative value claim was not included in the Court's Order Under Federal Rule 23(c)(1)(B) [doc. # 241], and the Court believes that the *Depenbrock* court is the appropriate forum for the enforcement of that court's judgment.

A. Early Retirement Benefits. The Court now turns to the substance of Plaintiffs' first claim, namely that CIGNA was required to inform plan participants that the lump sum did not include any early retirement benefits (other than the Preserved Spouse's benefit). Under the terms of Part B, an employee with an accrued benefit under Part A may choose at retirement to receive either the Part B accrued benefit as a lump sum or the Part A accrued benefit as an annuity. The lump sum can be no less than the equivalent actuarial value of the employee's protected minimum benefit, but as discussed in the Anti-Backloading and Non-Forfeiture section, that minimum benefit includes no early retirement benefits other than the Preserved Spouse's benefit (where applicable). The annuity, on the other hand, includes all early retirement benefits for which the employee would have been eligible under Part A.[48] *See* Ex. 1 (Part B), at D00309 (§ 7.3); Ex. 158, at MER00660 ("[CIGNA] could consider the use of a lump sum in Tier 1 but only for accrued benefits payable at normal retirement age. In other words, any Tier 1 employee electing a lump sum would forfeit the value of the early retirement subsidy."). Thus, at retirement, CIGNA employees with Part A accrued benefits must choose between a lump sum payment of the protected minimum benefit and an annuity that includes any subsidized early

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48 Part B accrued benefits are also available in annuity form. *See* Ex. 1 (Part B), at D00305 (§ 7.1(a)). However, given that Class members' annuities automatically included early retirement benefits available under Part A, the Part B annuity for these employees was essentially converted into an annuity of their Part A accrued benefit.

retirement benefits for which the employees would have qualified. In making their claim that CIGNA should have provided clearer notices regarding the availability of early retirement benefits, Plaintiffs rely on ERISA §§ 203(e) and 205(g). Both of these provisions require the written consent of a plan participant before a retirement benefit exceeding $5,000 may be distributed as a lump sum, and various Treasury regulations explain and expand on the consent requirement.[49] For example, Treasury Regulation 1.401(a)-20, Q&A-36 states that

> for plan years beginning after December 31, 1988, participants must be furnished a general description of the eligibility

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[49] Plaintiffs also raised previously a claim that CIGNA had failed to protect benefits earned under Part A, in violation of ERISA § 204(g), 29 U.S.C. § 1054(g), which prohibits amendments that decrease benefits already accrued under a pension plan. As discussed in the Anti-Backloading and Non-Forfeiture section, the normal retirement benefit accrued under Part A, as well as the Preserved Spouse's benefit where applicable, became part of the protected minimum benefit under Part B. CIGNA argues that the subsidized early retirement benefits previously offered under Part A, while not part of the protected minimum benefit, were nevertheless preserved as required by ERISA § 204(g) because employees who would have qualified for those benefits under Part A could receive them as part of their annuity under Part B. *See* Defs.' Post-Trial Brief [doc. # 251], at 111 n.93 ("Part A did not offer employees a lump sum benefit option. Thus, all of the early retirement benefits were available under Part A only in annuity form, and they are protected by Part B in that same form.") (citation omitted). The Court construes Plaintiffs' failure to pursue their § 204(g) claim in their post-trial briefing as an indication that they have abandoned this claim, and thus the Court does not decide this issue.

> conditions and other material features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit available under the plan (*e.g.*, the extent to which optional forms are subsidized relative to the normal form of benefit or the interest rates used to calculate the optional forms).

26 C.F.R. § 1.401(a)-20, Q&A-36; *see also* 26 C.F.R. § 1.417(e)-1(b)(2)(i) (stating that no consent to a lump sum distribution is valid unless the plan participant receives a disclosure form that satisfies the requirements of Q&A-36). Other Treasury regulations state that

> different optional forms of benefit exist if a distribution alternative is not payable on substantially the same terms as another distribution alternative. . . . Thus, for example, different optional forms of benefit may result from differences in terms relating to the payment schedule, timing, commencement, medium of distribution (*e.g.*, in cash or in kind), election rights, differences in eligibility requirements, or the portion of the benefit to which the distribution alternative applies.

26 C.F.R. § 1.401(a)(4)-4(e)(1)(i); *see also* 26 C.F.R. § 1.411(d)-4, Q&A-1(b)(1) (same). This language is echoed in the Part B plan document, which states that

> [t]he Plan Administrator shall provide to each Participant . . . a written explanation of . . . [t]he terms and conditions of a Qualified Annuity, including a general description of the eligibility conditions and other material

> features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit available under the Plan.

Ex. 1 (Part B), at D00305 (§ 7.1(b)(1)).

Looking at the terms of the Treasury regulations, the Court agrees with Plaintiffs that CIGNA was required to notify its employees that the subsidized early retirement benefits were available only through the annuity option.[50] Treasury Regulation 1.401(a)-20, Q&A-36, for example, obligates employers to explain "the extent to which optional forms are subsidized relative to the normal form of benefit." Thus, under the plain language of the regulation, merely including the early retirement benefits in the value of the annuity, without making clear that those early retirement benefits were available as part of the annuity and only as part of the annuity, was insufficient. Yet a cursory examination of the benefit election forms reveals no such disclosure, *see*, *e.g.*, Ex. 144, at SuppD2406-SuppD2408, and even CIGNA's own expert agreed that CIGNA failed to provide this information in its election forms. *See* Ex. 193 (Sher Dep.), at 78:9 to 79:18 ("Q. And do you see any language in there that – that explains the extent to which optional forms are subsidized relative to the normal form of benefit? . . . A. There is nothing that I see. . . . I don't see anything that compares one benefit to another other than the numbers themselves and the

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50 The Court finds that CIGNA did, however, comply with its obligation to notify participants that they could choose to defer the receipt of their benefits. *See* 26 C.F.R. § 1.411(a)-11(c)(2)(i).

explanations."); Ex. 239 (Arko Dep.), at 154:24 to 156:2 ("Q. Does that description indicate to participants that some of those benefit payment options may contain subsidized values, whereas other ones may not contain subsidized values? . . . A. I see no specific words that mirror those that you just asked about . . . ."). Instead, CIGNA and its actuaries had been operating under the assumption that the two forms of benefit – the annuity and the lump sum – were substantially equal, even though they were not; that is, subsidized early retirement benefits were only included in the former, not the latter. *See* Ex. 198 (Morris Deposition), at 135:5-7 ("It was our understanding that all benefits were equal, relatively equal."); Ex. 240 (Arko Dep.), at 119:22 to 120:17. Thus, the Court finds that CIGNA violated ERISA and the relevant Treasury regulations by not including an explicit statement in its benefit election forms to the effect that early retirement benefits accrued under Part A were only available under the annuity, and not as part of the lump sum payment.

B. Lump Sum Versus Annuity. However, contrary to Plaintiffs' claims, CIGNA was not required to inform plan participants whether, in the case of a particular employee, the annuity option was more valuable than the lump sum option. It is true that Treasury regulations required "sufficient additional information to explain the relative values of the optional forms of benefit available under the plan," 26 C.F.R. § 1.401(a)-20, Q&A-36, but it is unclear what "relative value" was intended to mean, or how employers could comply with that requirement. Plaintiffs argue that in order to provide an understandable explanation of the value of an annuity versus that of a lump sum, CIGNA

needed to calculate the present value of the annuity, essentially putting the two benefits into a similar economic form. Such a presentation would also, at least implicitly, suggest which of the two was more valuable.[51] The Court disagrees.

More recent Treasury regulations, which became effective as of October 2004, offer helpful insight. The notice of proposed rule-making for the revised regulations defined the problem to be addressed as follows:

> In particular, participants who are eligible for both subsidized annuity distributions and unsubsidized single-sum distributions may be receiving notices that do not adequately explain the value of the subsidy that is foregone if the single-sum distribution is elected. In such a case, merely disclosing the amount of the single-sum distribution and the amount of annuity payments may not adequately enable those participants to make an informed comparison of the relative values of those distribution forms, even if the interest rate used to derive the single sum is disclosed. Furthermore, questions have been

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51 Plaintiffs argue that CIGNA's statement in its Retirement Kit to the effect that "[t]he lump sum distribution option can be very valuable," Ex. 508, at D00729, is itself comparative, and misleading when no information is provided regarding the value of the annuity option. In light of the details provided in the benefit election form as to the lump sum and the monthly annuity payments, however, and the absence of a similar statement in that document, the Court does not agree with Plaintiffs' interpretation of the effect of the Retirement Kit's language.

> raised as to how the relative values of optional forms of benefit are required to be expressed under current regulations. *Accordingly, these proposed regulations are being issued to propose disclosure requirements that would enable participants to compare the relative values of the available distribution forms using more readily understandable information.*

67 Fed. Reg. 62417, at 62419 (emphasis added).[52] The notice went on to explain that under the proposed regulations, and so presumably not under the version previously in effect,

> the description of the relative value of an optional form of benefit compared to the value of the [qualified joint spousal annuity] must be expressed in a manner that provides a meaningful comparison of the relative economic values of the two forms of benefit *without the participant having to make calculations using interest or mortality assumptions.*

Id (emphasis added).

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[52] CIGNA has represented that it has brought its disclosures into compliance with the new regulations and has offered any employee who chose a less valuable benefit option after the effective date of the new regulations an opportunity to reconsider that choice. *See* Trial Tr. 805:22 to 806:24; Ex. 740 (example letters to participants reflecting revised relative value disclosures). Plaintiffs do not appear to contest this representation (except with regard to the *Depenbrock* class, which the Court has stated it will not consider), and so the Court will address only the period of January 1, 1998, when Part B became effective, until September 30, 2004.

This language suggests to the Court that although employers certainly could have chosen previously to provide the present value of both the annuity and lump sum options, such an approach was not required before the new regulations went into effect in 2004. Instead, employers could choose, like CIGNA, to provide the monthly payment available under the annuity and the value of the lump sum disbursal, and leave employees (and presumably their financial advisers) to make the necessary calculations to determine the present value of the annuity.[53] As CIGNA's expert, Mr. Sher, testified, one reason CIGNA might have chosen to do so is that providing the present value of an annuity and a lump sum, without further information, may in fact be misleading. *See* Trial Tr. 1233:7-25. Although the present value of the annuity may exceed the lump sum, the employee has the opportunity to invest the lump sum as she chooses, and those returns may result in a larger overall sum than the present value of the annuity. There are also personal reasons why certain employees might prefer a lump sum, such as the desire to have control over one's investments. Indeed, Ms. Jones, the only plaintiff to testify that she had chosen a lump sum worth less than the annuity, testified that she had met with a financial adviser regarding her retirement options. *See* Trial Tr. 745:13-14. Finally, the Court notes that CIGNA was not an outlier in choosing not to offer the present value of the annuity

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[53] Importantly, even under the 2004 regulations, providing present values of the annuity and the lump sum is not the only way to comply with the "relative value" requirement. *See* 26 C.F.R. § 1.417(a)(3)-1(c)(2).

option to its employees; CIGNA's expert, Mr. Sher, testified that in doing so, CIGNA was following the general practice in the industry prior to the new regulations. *See* Trial Tr. 1231:23 to 1232:12. For all of these reasons, then, the Court finds that CIGNA did not violate ERISA by failing to indicate on employees' benefit election forms whether the annuity option or the lump sum option was more "valuable."

C. Greater Benefits. Plaintiffs' final two claims, that CIGNA should have informed its employees if the benefits under Part A were greater than those under Part B and if waiting to retire would result in greater benefits, are related. For waiting to retire could result in greater benefits (excepting the interest that would accrue while CIGNA held the underlying funds) only if the employee became eligible for early retirement benefits in the meantime. Although there is no support in the regulations for an obligation on CIGNA affirmatively to point out the greater of the available options, the Court finds that CIGNA assumed that obligation as a result of statements it made in materials describing the transition to Part B. In both the October 1998 and September 1999 SPDs, for example, CIGNA wrote, "Your final Plan benefits cannot be less than your old plan benefits on December 31, 1997. *If this minimum benefits rule applies to you, you'll be notified by the Retirement Service Center when you request a distribution.*" Ex. 505 (1998 SPD), at D00838 (original emphasis omitted and emphasis added); Ex. 506 (1999 SPD), at D00629 (same). As the Second Circuit has noted,

> ERISA contemplates that the summary plan description will be an employee's primary source of information regarding employment

> benefits, and employees are entitled to rely on the descriptions contained in the summary. Further, the SPD is of such importance that where the terms of a plan and the SPD conflict, the SPD controls.

Frommert, 433 F.3d at 265 (quotation marks and citations omitted). Thus, CIGNA was required, as a result of its promises in the SPDs, affirmatively to notify its employees if the present value of their retirement benefits under Part A exceeded those available under Part B. As CIGNA's current plan administrator, Mr. Arko, testified at his deposition, there is no specific "disclosure that tells [plan participants] what they are being offered is the minimum benefit." Ex. 239 (Arko Dep.), at 295:13-14. Instead, Mr. Arko noted that "we make available to them the 800 number if they want to call to ask specific questions about the calculation of benefits." *Id.* at 295:15-18. Although CIGNA similarly suggests in its Post-Trial Brief that simply including the value of the Part A annuity among an employee's retirement options on the benefit election form satisfied this requirement, the Court disagrees. *See* Defs.' Post-Trial Brief [doc. # 251], at 117 n.99 ("To comply with this provision, the Plan Administrator notified participants by providing on their benefit election forms the amount of each benefit option, including the minimum benefits where applicable. Under the Plan, as under the prior regulations that were in effect at the time the Plan document and SPD were drafted, nothing more was required to apprise participants of the values of their various benefit options."). Especially in light of the difficulty employees (and even experts) had in evaluating the comparative value of the different retirement options, CIGNA could only comply with its obligation

by pointing out explicitly that the Part A annuity had the greater present value.

However, the Court finds that CIGNA was not required to inform its employees that they would qualify for early retirement benefits under Part A if they postponed their retirement. Class member Douglas Robinson, for example, elected a lump sum distribution at age 54 and 3 months. Had he waited until age 55 to retire, he would have been eligible for early retirement benefits that would have resulted in an annuity with twice the present value of the lump sum he received. *See* Ex. 144, at SuppD2405-SuppD2406. Plaintiffs argue that CIGNA should have informed Mr. Robinson of this fact. For support, they point to CIGNA's promises to inform employees if their Part A benefits were greater than those under Part B, and Treasury Regulation 1.401(a)-20, Q&A-36, which requires a "general description of the eligibility conditions and other material features of the optional forms of benefit" on benefit election forms. Under Treasury Regulation 1.401(a)(4)-4(e)(1)(i), "optional forms of benefit" include those resulting from "differences in terms relating to the payment schedule, timing [or] commencement." CIGNA, on the other hand, claims that it was not required to provide information regarding age-55 early retirement benefits on Mr. Robinson's benefit election form because he did not yet qualify for them at the age of 54 and 3 months. *See* Defs.' Post-Trial Brief [doc. # 251], at 118 n.100.

The Court agrees with CIGNA. Although the regulations require a benefit election form to notify the employee of optional forms of benefit that differ with respect to timing or commencement, they nowhere require that employers inform employees of benefits for which those employees do not qualify.

Nor is the Court willing to read such a requirement into the regulations, given the administrative burden on employers that would result and the difficulty of finding a principled stopping point. For example, if Mr. Robinson had been 53, or 50, or 45 at the time he retired, would CIGNA have been required to notify him of the possibility that he would qualify for early retirement benefits if he only postponed his retirement until age 55? Similarly, one could argue that if CIGNA expected interest rates to rise in future, resulting in a larger annuity benefit, CIGNA should be required to inform employees of this possibility as well. Yet such a requirement is clearly impracticable. Given this impracticability and the fact that there is no allegation here that Mr. Robinson, independent of the benefit election form, was misled regarding the Plan's early retirement benefits, the Court finds that CIGNA's benefit election forms were not deficient in this respect. In sum, the Court finds that CIGNA violated ERISA in not informing plan participants if the benefits for which they qualified at the time of retirement under Part A were greater than those available under Part B, but did not violate ERISA in not notifying employees if their benefits would be greater if they postponed retirement (as a result of qualifying for early retirement benefits under Part A).

VIII. Conclusion

To summarize, the Court concludes that CIGNA's cash balance plan did not violate the anti-backloading and non-forfeiture rules in ERISA §§ 203(a) and 204(b)(1)(B) (Count One), nor did it violate the age discrimination provision in ERISA § 204(b)(1)(H) (Count Three). Further, CIGNA was not required to provide notice to rehired employees of the modification to the rehire rule under ERISA

§ 204(h) (Count Four). To the extent Plaintiffs maintain an anti-cutback claim under ERISA § 205(g) as part of Count Five, the Court also finds that no cutback of accrued benefits occurred under Part B. However, the Court finds that CIGNA failed to provide notice of a significant reduction in the rate of future benefit accrual under Part B in violation of ERISA § 204(h) (Count Four). CIGNA also failed adequately to disclose material modifications to its pension plan and features that may result in reductions, losses, or forfeitures of benefits that a participant might otherwise reasonably expect to receive, in violation of ERISA § 102 (Count Two). Finally, CIGNA failed to disclose the extent to which optional forms of benefit were subsidized, as required by Treasury Regulation 1.401(a)-20, Q&A 36, and whether plan participants' Part A minimum benefit exceeded their Part B account balance, as CIGNA had promised to do in its disclosures regarding Part B (Count Five). Thus, the Court grants judgment to CIGNA on Counts One, Three, Four (to the extent Count Four addresses the rehire rule), and Five (to the extent Count Five addresses the cutback of accrued benefits); and grants judgment on liability only to Plaintiffs on Counts Two, Four (to the extent Count Four addresses CIGNA's § 204(h) notices), and Five (to the extent Count Five addresses failures of disclosure).

Determining what remedies are available and appropriate in light of the Court's liability findings is a complex issue on which the Court desires further briefing. Therefore, the Court hereby ORDERS the parties to file simultaneous briefs regarding class relief **no later than March 17, 2008**. At the same time, the parties should file briefs regarding the issue of how to address any remaining claims,

including individual claims. The parties should file simultaneous responses to each other's briefs **no later than March 31, 2008**.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: February 15, 2008.

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANICE C. AMARA, individually and on behalf of others similarly situated,	:	
Plaintiff,	:	
v.	:	Case No. 3:01CV2361(MRK)
CIGNA CORPORATION and CIGNA PENSION PLAN,	:	
Defendants.	:	

MEMORANDUM OF DECISION

The Court previously issued an opinion in this case regarding liability. *See* Memorandum of Decision ("Liability Decision") [doc. # 269]. The Court will assume that the reader is familiar with its Liability Decision and will not repeat at length the numerous findings of fact and conclusions of law determined in that opinion. Here, the Court decides what relief is appropriate in light of the statutory violations determined in its Liability Decision.

Those violations related primarily to certain notices and disclosures CIGNA Corporation and the CIGNA Plan (collectively, "CIGNA") were required to provide to CIGNA employees in connection with the transition from a defined benefit pension plan to a cash balance plan. Additional issues, including the specific mechanisms for implementing the relief provided, will be addressed in a later decision.

The remedy issues addressed in this decision are complex, difficult, and enormously important to employers and employees alike. Unfortunately, the relevant statutory provisions and existing case law do not provide clear guidance. Moreover, the remedy choices available to the Court are not ideal, for either CIGNA or Plaintiffs. Therefore, the Court candidly acknowledges at the outset considerable uncertainty regarding the proper resolution of many of the issues addressed below. For that reason, the Court has decided *sua sponte* to stay its judgment so that the parties can proceed to the Second Circuit for further guidance before the Court and the parties seek to implement the Court's judgment. The stakes are far too high – for both CIGNA and its employees – to implement the Court's judgment in the face of such substantial uncertainty.

I.

Before turning to the substance of the appropriate relief, the Court will address two preliminary procedural questions: (1) which issues are appropriate for class treatment and which should be considered individual issues; and (2) what remedies are available in an ERISA class action certified under Rule 23(b)(2) of the *Federal Rules of Civil Procedure*.

A.

Plaintiffs argue that there are no remaining individual issues in light of the Court's Liability Decision. CIGNA, on the other hand, claims that several important individual issues remain. CIGNA identifies four issues it considers appropriate for individual treatment following the Court's Liability Decision: whether any individual employee suffered likely prejudice and/or whether the violations constituted harmless error for that employee; whether and when an employee gained actual knowledge of the true facts regarding the transition to Part B; whether an employee individually faced a significant reduction in the rate of future benefit accrual such that a § 204(h) notice was required for that particular employee; and whether certain waivers signed by retiring employees beginning in 2004 make those employees ineligible for any relief. As a result, CIGNA asks the Court to decertify the Class or to commence individual discovery and hold Teamsters hearings (named for *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 360-61 (1977)) on the remaining individual issues. Indeed, CIGNA asks for permission to begin depositions of each of the approximately 25,000 members of the Class. *See* Defendants' Memorandum on Individual Issues and Class Relief [doc. # 276] at 9 n.10. The Court agrees with Plaintiffs.

With respect to CIGNA's claim that individual issues remain regarding likely prejudice/harmless error, CIGNA relies primarily on two documents – the parties' March 10, 2006 Stipulation and Joint Motion on Conduct of Discovery and Trial on "Likely Prejudice" and "Harmless Error" Issues Connected with Second and Fourth Claims for Relief

("Stipulation") [doc. # 167] and the Court's March 12, 2007 Order Under Federal Rule 23(c)(1)(B) ("Rule 23(c)(1)(B) Order") [doc. # 241]. In the Stipulation, the parties agreed to engage in limited discovery, involving eight class members chosen by Plaintiffs and eight chosen by CIGNA, regarding the likely prejudice/harmless error issue in order to determine whether a basis existed for expanding similar discovery to the entire Class. In the Rule 23(c)(1)(B) Order, the Court described the claims as articulated by Plaintiffs and the defenses as articulated by CIGNA. At the time, CIGNA opposed several of the claims described by Plaintiffs on the ground that the issues involved were individual, rather than class-wide.

CIGNA's arguments regarding likely prejudice/harmless error fail for several reasons. First, CIGNA's interpretation of the Stipulation and the Rule 23(c)(1)(B) Order is belied by the text of those two documents. The Stipulation expressly states, "The parties expect that the trial will result in a final judgment on the issues of likely prejudice and harmless error for all class members who testify. *The Court will decide whether the trial results in a final judgment on these issues for all other class members.*" Stipulation [doc. # 167] at 4-5 (emphasis added). The Stipulation also notes that the parties would confer with the Court after the trial to determine "[t]he *need for*, and procedures for, any individualized hearings on likely prejudice or harmless error, and any related discovery." *Id.* at 5 (emphasis added). The Court's Rule 23(c)(1)(B) Order uses similar language:

> In designating the class issues, the Court relies upon the Third Amended Complaint [doc. # 165], for which leave to amend was

> granted on February 15, 2006 [doc. # 164]. In contesting the class claims, Defendants have identified class, sub-class, and individual defenses. The recitation below generally sets forth the claims of the parties as they have chosen to describe them, with such specificity as is required to understand the claim. *The Court expresses no opinion on the merits of the claims or defenses of the parties, and therefore the parties should attach no significance to the particular phraseology chosen to describe any claim or defense* . . . .

Order Under Federal Rule 23(c)(1)(B) [doc. # 241] at 2-3 (emphasis added).

Thus, both the parties' Stipulation and the Court's Rule 23(c)(1)(B) Order contemplated the possibility that once the trial was complete, the Court would determine that no individual issues regarding likely prejudice/harmless error remained. And in fact that is exactly what the Court did when it held that "[a]pplying the *Burke* [*v. Kodak Retirement Income Plan*, 336 F.3d 103 (2d Cir. 2003),] and *Frommert* [*v. Conkright*, 433 F.3d 254 (2d Cir. 2006),] standard to the facts of this case, . . . Plaintiffs have met their burden of showing likely harm and prejudice." Liability Decision [doc. # 269] at 104. The Court did not distinguish the named Plaintiffs from the rest of the Class, nor did the Court require an individualized showing such as that requested by CIGNA, even from the named Plaintiffs themselves. Such an approach both mirrors the case law (*Frommert*, for example, which was not even certified as a class action, did not require individualized showings by each plaintiff) and reflects the group nature of the harm inflicted. For

CIGNA issued the same misleading notices and disclosures to the Class as a whole, and thus all class members were affected equally and in a similar manner by those publications. As a consequence, the Court believes that its holding unambiguously applies to the entire Class, and that no individual issues remain with respect to likely prejudice/harmless error.

Even assuming that the Court's holding could be interpreted as leaving open the possibility that individual issues remained on this subject, the Court would nevertheless reject CIGNA's arguments. CIGNA "acknowledge[s] that this Court has held that certain uniform written communications were insufficient to defeat a claim of likely prejudice, or demonstrate harmless error, on a classwide basis, and . . . do[es] not seek to relitigate those issues here." Defs.' Mem. [doc. # 276] at 3. Yet CIGNA then goes on to argue that

> before an absent class member is entitled to a remedy, the Court must rule on whether that class member had "actual knowledge" of the information the Court held was not sufficiently disclosed, and whether that class member's particular claims otherwise succeed or fail under the likely prejudice/harmless error analysis.

Id. at 3-4.[1] In making this claim, CIGNA does not explain on what basis it expects to find that certain

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[1] The Court notes that CIGNA purports to stay within Second Circuit precedent in making its argument. However, CIGNA then goes on explicitly to assert that "[a]t a minimum, a plan participant should be required to prove detrimental reliance before being entitled to benefits based on a flawed

employees, despite having received the same disclosures CIGNA admits "were insufficient to defeat a claim of likely prejudice, or demonstrate harmless error," *id.* at 3, would have "actual knowledge" of the undisclosed information. The Court notes in this regard that Plaintiffs assert, *see* Plaintiffs' Reply Memorandum on Relief [doc. # 277] at 13, and CIGNA has not denied, that CIGNA failed to avail itself of the full scope of discovery permitted under the parties' Stipulation. Rather, CIGNA limited its discovery to requesting documents from and deposing the eight class members chosen by Plaintiffs, and decided not to call any class members at all as witnesses at trial. Thus, CIGNA has not provided the Court with any evidence that even a single employee had actual knowledge from CIGNA of the undisclosed information regarding the transition to Part B.

The qualifier "from CIGNA" is important, for only official corporate statements, whether from written documents or from CIGNA employees responsible for providing that information, should be permitted to supplement the official disclosures the Court found lacking in its Liability Decision. Although CIGNA suggests that the office rumor mill, or statements made at a co-worker's going-away party, could suffice to render harmless the materially misleading notices and disclosures officially provided by CIGNA, there is no case support for what the

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SPD," Defs.' Mem. [doc. # 276] at 2 n.1, a position contrary to Second Circuit precedent, *see* ***Frommert***, 433 F.3d at 267 (rejecting requirement of actual prejudice) (citing *Burke*, 336 F.3d at 112).

Court considers an outlandish proposition. For in each of the cases CIGNA cites, the employer provided information regarding the missing provisions by means of an additional, official notice or through authorized conversations between an employee and a representative of the company. *See, e.g.*, *Weinreb v. Joint Diseases Orthopaedic Inst.*, 404 F.3d 167, 171-72 (2d Cir. 2005); *Park v. Trustees of the 1199 SEIU Health Care Employees Pension Fund*, 418 F. Supp. 2d 343 (S.D.N.Y. 2005); *Pastore v. Witco Corp. Severance Plan*, 388 F. Supp. 2d 212, 221 (S.D.N.Y. 2005).[2] Given that CIGNA bears the burden of demonstrating harmless error, *see Burke*, 336 F.3d at 113, and has instead offered only unsupported speculation about what thousands of depositions might reveal, the Court would in any event decline to order the wide-ranging, time-consuming, and almost certainly fruitless additional discovery CIGNA requests.

For the same reasons, the Court rejects CIGNA's argument that whether and when an employee gained "actual knowledge" of the facts regarding Part B should be treated as an individual issue. At oral argument, CIGNA suggested that employees who received but did not read the misleading notices and disclosures should be considered not to have demonstrated likely harm. And in a supplemental filing with the Court, CIGNA points to *Cement & Concrete Workers District Council Welfare Fund v.*

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[2] Moreover, the harmless error cases that CIGNA relies on all involved requirements to qualify for benefits under the plan, rather than material misrepresentations in official company notices and disclosures about the plan, making those cases of questionable relevance here.

Lollo, 148 F.3d 194 (2d Cir. 1998), for the proposition that "a plaintiff cannot recover for a misrepresentation under ERISA without proof that he personally knew of the misrepresentations." Defendants' Responses to the Court's April 30, 2008 Inquiries [doc. # 280] at 10.

However, the Court does not consider this statement a good-faith representation of the Second Circuit's holding in *Lollo*, as even the most cursory review of the opinion makes clear. There, the Second Circuit faced a scenario in which the misrepresentations of an ERISA fiduciary to a *third party* allegedly resulted in harm to the plaintiffs (in the form of inadequate funding for the plan). As the court explicitly stated, "We hold that a plaintiff does not establish the reliance element of fraud for purposes of ERISA or New York law by showing only that a third party relied on a defendant's false statements." *Lollo*, 148 F.3d at 196. *Lollo* had nothing to do with statutory violations regarding the notices and disclosures mandated by ERISA, and the Second Circuit made the statement cherry-picked by CIGNA in the context of a claim for fraud, which unlike the statutory violations asserted in this case, requires a showing of detrimental reliance.[3]

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[3] In that same supplemental filing, CIGNA also cites to *Moriarity v. United Technologies Corp. Represented Employees Retirement Plan*, 947 F. Supp. 43, 52-53 (D. Conn. 1996), for the proposition that a participant may not be considered harmed by a misleading notice if he has not in fact read that notice. However, CIGNA does not explain how *Moriarity*'s holding, which imposes a detrimental reliance standard, survives the Second Circuit's later decision in *Burke*. *See also Manginaro v. Welfare Fund of Local 771, I.A.T.S.E.*, 21 F. Supp. 2d 284, 296

Perhaps unsurprisingly, CIGNA also fails to comment on the likelihood that any employee could even recall, much less prove, ten years after the fact, which publications (or sections of publications) she had read at the time of the transition. As with the likely prejudice/harmless error issue, the Court believes that CIGNA is seeking impermissibly to shift its burden of proof onto the Class. That CIGNA may not do. *See Burke*, 336 F.3d at 113.

The other two alleged individual issues raised by CIGNA, regarding § 204(h) notices and waivers, appear only in footnotes (perhaps signaling that even CIGNA is uneasy about raising them). With respect to the former, CIGNA claims that individual discovery is appropriate to determine whether a particular employee, at the time of the transition to Part B, was likely to experience a significant reduction in the rate of future benefit accrual, thus triggering a § 204(h) notice. *See* Defs.' Mem. [doc. # 276] at 3 n.2. For the reasons discussed above, CIGNA is incorrect to say that the Court's description of this issue as possibly individual in its Rule 23(c)(1)(B) Order constitutes a ruling that the Court itself either held that position then or does so now. The Court agrees with CIGNA that a § 204(h) notice is due only to those employees whose benefits are "reasonably expected" to be reduced, *see* Treas. Reg. 1.411(d)-6T (Q&A-8), and that "[w]hether a participant or alternate payee is described in paragraph (a) of this Q&A-9 [as a 'participant whose

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(S.D.N.Y. 1998) (rejecting *Moriarity*'s detrimental reliance standard).

rate of future benefit accrual is reasonably expected not to be reduced by the amendment'] is determined based on all relevant facts and circumstances at the time the amendment is adopted." Treas. Reg. 1.411(d)-6T (Q&A-9(b)). However, the language of the regulation suggests to the Court that CIGNA should have undertaken the assessment of the "relevant facts and circumstances" contemporaneously with the provision of the notice to other employees; in other words, CIGNA should have determined, as it planned the dissemination of its notices, whether there were any employees or classes of employees who did not need to receive a § 204(h) notice. Such an interpretation is not only true to the text of the regulation, but also recognizes the difficulty of performing such an analysis after the fact. Here, for example, CIGNA would have to attempt to recreate, a decade later, what it would reasonably have known about the effect on each individual's retirement benefits as a result of the implementation of Part B. Such a feat is difficult, if not impossible – and thus it is perhaps unsurprising that CIGNA has presented no evidence, either at trial or in its submissions on remedies, to suggest either that it is capable of performing such an after-the-fact analysis or that the analysis would indicate that certain classes of employees were not entitled to a § 204(h) notice.

Further and more importantly, the issue at this point is not who was entitled to a § 204(h) notice; the Court addressed that issue in its Liability Decision. *See* Liability Decision [doc. # 269] at 76-78 (employees generally), 105-09 (rehires). Rather, the relevant issue at this point is what to do about the material misrepresentations in the § 204(h) notices CIGNA in fact sent to all the members of the Class

except rehires. The Court does not believe that CIGNA should be permitted to escape responsibility for its misleading statements by attempting to determine ten years after the fact that certain employees were never entitled to receive the misleading notices CIGNA sent them.

Regarding waivers, CIGNA makes only the halfhearted claim that it "*may* . . . be able to rely on a release signed by certain absent class members as a complete defense to their claims." Defs.' Mem. [doc. # 276] at 7 n.8 (emphasis added). CIGNA is correct that the Court rejected its argument about waivers in its Liability Decision. *See* Liability Decision [doc. # 269] at 39. However, the Court did not limit its holding to the pre-2004 waivers; rather, it stated, "the Court concludes that CIGNA, which has the burden of proof on this issue, has failed to demonstrate under any standard, much less the 'closer scrutiny' applicable in the ERISA context, that the waivers signed by CIGNA employees intentionally relinquished or abandoned the claims Plaintiffs assert here." *Id.* (citation omitted). Thus, the Court concludes that CIGNA has failed to identify, in light of the evidence offered at trial and the Court's Liability Decision, any remaining individual issues.

B.

The second preliminary issue was not raised by either party in their submissions on remedies, but the Court feels compelled to address it. The issue relates to the compatibility of certain kinds of relief under ERISA with the limitations imposed on Rule 23(b)(2) class actions. Specifically, Plaintiffs in this case invoke both ERISA § 502(a)(1)(B), which enables a claimant "to recover benefits due to him

under the terms of [the] plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan," and ERISA § 502(a)(3), which permits suits

> by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.

However, Rule 23(b)(2) of the *Federal Rules of Civil Procedure* provides for class actions where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that *final injunctive relief or corresponding declaratory relief* is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2) (emphasis added).

As the Second Circuit has noted, when claims for monetary relief predominate over claims for injunctive or declaratory relief, certification under Rule 23(b)(2) may not be appropriate. The court set forth the standard for such certification decisions in *Robinson v. Metro-North Commuter Railroad Co.*, 267 F.3d 147 (2d Cir. 2001), stating that

> before allowing (b)(2) certification a district court should, at a minimum, satisfy itself of the following: (1) even in the absence of a possible monetary recovery, reasonable plaintiffs would bring the suit to obtain the injunctive or declaratory relief sought; and (2) the injunctive or declaratory relief sought would be both reasonably necessary and appropriate were the plaintiffs to succeed on the merits. Insignificant or sham requests

> for injunctive relief should not provide cover for (b)(2) certification of claims that are brought essentially for monetary recovery.

Id. at 164. The "presumption of cohesion and unity between absent class members and the class representatives" that underlies Rule 23(b)(2) classes permits "incidental damages," however, "because entitlement to such damages does not vary based on the subjective considerations of each class member's claim, but flows directly from a finding of liability on the claims for class-wide injunctive and declaratory relief." *Id.* at 165 (quotation marks and alterations omitted).

The question, then, is whether the "benefits due under the terms of the plan" that Plaintiffs seek in this case constitute non-incidental damages such that the relief requested is not appropriate for a Rule 23(b)(2) class. Having considered the facts and circumstances of this case and governing precedent, the Court is satisfied that Plaintiffs' prayer for monetary relief is incidental to the injunctive and declaratory relief sought, and thus the certification of the class under Rule 23(b)(2) is no bar to that relief. As an initial matter, the Court notes that the presiding judge at the time the Class was certified did not have the benefit of the Second Circuit's guidance in *Robinson*. *See* Memorandum of Decision [doc. # 61]. Understandably, then, the findings now required by *Robinson* are absent from that opinion. Nevertheless, the Court finds that the Class would have merited certification under Rule 23(b)(2) under *Robinson*, because CIGNA acted on grounds generally applicable to the Class, and the primary relief sought by Plaintiffs is a declaration that Part B is invalid and an injunction requiring the plan

administrator to reform his records to provide employees with benefits under Part A.

Here, CIGNA applied the terms of Part B to all class members equally, and CIGNA also sent out identical notices and disclosures to the members of the Class. As a result, any injunctive or declaratory relief ordered by the Court could be implemented as to all class members without regard to the members' individual circumstances, and any monetary relief awarded to Plaintiffs would be as a direct result of the equitable relief ordered. The calculation of benefits would be a mechanical process that would not depend in any way on "the subjective considerations of each class member['s] claims." *Parker v. Time Warner Entm't Co., L.P.*, 331 F.3d 13, 20 (2d Cir. 2003) (quotation marks omitted). Further, the Court believes that reasonable plaintiffs would seek this injunctive and declaratory relief even if no monetary recovery were possible – in light of the benefit to the Class even solely on a prospective basis – and that at least some form of the injunctive and declaratory relief requested by Plaintiffs is reasonably necessary and appropriate given their success on the merits of certain of their claims. *See Robinson*, 267 F.3d at 164.

The Court's conclusion is further supported by the fact that several other courts have made the same determination in similar factual circumstances. Although there is no Second Circuit decision directly on point, the Seventh Circuit, in an opinion by Judge Richard Posner, emphatically recognized the possibility of recovery under § 502(a)(1)(B) by a Rule 23(b)(2) class. In *Berger v. Xerox Corp. Retirement Income Guarantee Plan*, 338 F.3d 755 (7th Cir. 2003), "Xerox contend[ed] that this suit does not seek injunctive or declaratory relief, but really just

damages equal to the difference between the lump sums to which ERISA entitled the members of the class and the smaller lump sums that they actually received." *Id.* at 763. The Seventh Circuit rejected that argument, noting the importance of distinguishing the question of declaratory or injunctive versus monetary relief under Rule 23(b)(2) from the question of legal or equitable relief under ERISA (a question to which the Court will soon return). Judge Posner held that the relief requested by the class in *Berger* was "not equitable, but it is declaratory. What is sought is a declaration that Xerox's method of computing the lump sums to which withdrawing employees are entitled is unlawful. That is a ground common to all the members of the class." *Id.* Although

> the declaration sought and obtained was merely a prelude to a request for damages[,] . . . a declaratory judgment is *normally* a prelude to a request for other relief, whether injunctive or monetary . . . . As long as the concrete follow-on relief that is envisaged will if ordered . . . be the direct, anticipated consequence of the declaration, rather than something unrelated to it, the suit can be maintained under Rule 23(b)(2).

Id. at 763-64 (citations and emphasis omitted).

Here, too, Plaintiffs share a common complaint regarding the transition to Part B and the notices and disclosures related to that transition, and any recalculated benefits the Court awards would be "the direct, anticipated consequence" of its declaratory or injunctive relief. *Id.* at 764; *see also Heffner v. Blue Cross & Blue Shield of Ala.*, 443 F.3d 1330, 1340 (11th Cir. 2006) (permitting certification under Rule

23(b)(2) of plaintiffs' ERISA claims under § 502(a)(1)(B) and § 502(a)(3) but for Eleventh Circuit's requirement of individual showing of detrimental reliance to recover for misleading SPD); *cf. Sullivan v. LTV Aerospace & Defense Co.*, 82 F.3d 1251, 1257-59 (2d Cir. 1996) (holding that remedies under ERISA are equitable for purposes of determining right to jury trial under Seventh Amendment).

Two other district courts in the Second Circuit have also recently certified Rule 23(b)(2) classes in the context of a transition from a traditional defined benefit plan to a cash balance plan. *See Richards v. FleetBoston Fin. Corp.*, 235 F.R.D. 165 (D. Conn. 2006); *In re Citigroup Pension Plan ERISA Litig.*, 241 F.R.D. 172 (S.D.N.Y. 2006). Both of these cases also involved claims under ERISA § 502(a)(1)(B) and § 502(a)(3). In *Richards*, Judge Janet C. Hall noted that

> [t]he relief sought need not be solely equitable in nature: when both equitable and monetary relief are sought, the district court may still certify the class under subsection (b)(2) if it determines that certification is appropriate 'in light of the relative importance of the remedies sought, given all of the facts and circumstances of the case.'

235 F.R.D. at 173-74 (quoting *Parker*, 331 F.3d at 20). Further, *Richards* recognized that "[f]or purposes of subsection (b)(2), an injunction requiring the payment of monies unlawfully withheld in the past may be considered injunctive relief." *Id.* at 174.

In re Citigroup also certified a class under Rule 23(b)(2) under circumstances almost identical to those here. The district court stated that the

certification fell "squarely within the purview of Rule 23(b)(2)," because "even if [plaintiffs] were somehow precluded from monetary recovery, reasonable Plan participants would bring suit to enjoin the Plan's application of the fractional rule and to compel a reformation of the Plan to comply with ERISA's minimum rates of benefit accrual." *In re Citigroup*, 241 F.R.D. at 180-81. "In other words, given the import and necessity of plaintiffs' prayers for declaratory and injunctive relief, they 'predominate' over other prayers for relief under *Robinson*." *Id.* at 181.

Once again, the Court recognizes the distinction between injunctive relief for the purposes of Rule 23 (b)(2), and equitable relief versus monetary damages under ERISA § 502(a)(3). The Court concerns itself here solely with the former. For the reasons previously stated, the Court finds that certification under Rule 23(b)(2) was appropriate and does not serve as a bar to relief, whether under ERISA § 502(a)(1)(B) or § 502(a)(3).

II.

The Court must address one more preliminary issue before turning to the nature of the relief ordered, and that is the availability of relief under ERISA. Plaintiffs request a declaration that Part B is void and an injunction ordering a return to Part A, or, failing that, an injunction remedying the misrepresentations identified by the Court in its Liability Decision (for example, by establishing A+B and "comparable" benefits). Therefore, the Court must determine at the outset whether the relief Plaintiffs request is available to them under ERISA § 502(a)(1)(B), and if not, whether that relief is

instead available under the equitable catch-all provision of ERISA § 502(a)(3).

CIGNA rightly points out that the Court held in its Liability Decision that Part B itself is lawful. Therefore, the only violations for which CIGNA is liable are those regarding the notices and disclosures describing the transition to Part B. *See* Liability Decision [doc. # 269] at 121. CIGNA argues that the holding of *Frommert* regarding § 502(a)(1)(B)'s applicability to plan reformation, when combined with the Second Circuit's decision in *Crocco v. Xerox Corp.*, 137 F.3d 105 (2d Cir. 1998), bars any relief for Plaintiffs.

In *Frommert v. Conkright*, 433 F.3d 254, the Second Circuit held that when a court orders a plan administrator to reform the terms of a plan in light of misleading notices and disclosures, the court is in fact ordering the provision of benefits under the plan via ERISA § 502(a)(1)(B). *See* 433 F.3d at 270 ("The relief that the plaintiffs seek, recalculation of their benefits consistent with the terms of the Plan, falls comfortably within the scope of § 502(a)(1)(B) . . . .") (emphasis omitted). The court went on to note that "[b]ecause adequate relief is available under this provision, there is no need on the facts of this case to also allow equitable relief under § 502(a)(3)," and cited to other court of appeals and Supreme Court cases for the proposition that relief should only be ordered under § 502(a)(3) if it is unavailable under ERISA's other remedy provisions. *Id.* (emphasis omitted); *see Wilkins v. Mason Tenders District Council Pension Fund*, 445 F.3d 572, 578 (2d Cir. 2006) ("Section 502(a)(3) has been characterized as a 'catch-all' provision which normally is invoked only when relief is not available under § 502(a)(1)(B).").

Prior to *Crocco*, the Second Circuit had already restricted claims of inadequate disclosures to plan administrators only (claims for benefits under the plan, however, could proceed against the plan itself or the administrator or trustees of the plan in their official capacities). *See Lee v. Burkhart*, 991 F.2d 1004, 1010 (2d Cir. 1993); *Nechis v. Oxford Health Plans, Inc.*, 421 F.3d 96, 104 (2d Cir. 2005). In *Crocco*, the court extended the logic of *Lee v. Burkhart* to hold that an employer may not be considered a *de facto* co-administrator of a plan if an administrator has been designated in accordance with the requirements of ERISA. *See Crocco*, 137 F.3d at 107. CIGNA thus argues that because the "benefits under the terms of the plan" sought by Plaintiffs are only possible due to the notice and disclosure violations found by the Court, only the plan administrator may be held liable for the resulting benefits under the plan via § 502(a)(1)(B). Consequently, CIGNA asserts, Plaintiffs' failure to name the plan administrator as a defendant is not only fatal to their claim under § 502(a)(1)(B) but also to their claim under § 502(a)(3), because remedies available under the former may not be awarded instead under the latter.

The Court disagrees with CIGNA for several reasons and holds that Plaintiffs may recover benefits from the CIGNA Plan (as opposed to CIGNA itself) under § 502(a)(1)(B).[4] First and most

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[4] This Court held in its Liability Decision that CIGNA had indeed validly named a plan administrator. *See* Liability Decision [doc. # 269] at 64-65. However, as the Court indicated in its Liability Decision, *see id.* at 68, but for *Crocco*'s seemingly categorical prohibition on *de facto* co-administrators, the Court

importantly, nowhere has the Second Circuit made the distinction CIGNA attempts to draw between benefits under the terms of the plan as written and benefits under the terms of the plan as affected by inadequate or misleading disclosures. Misleading notices and disclosures were not at issue in *Crocco*, and in *Frommert*, the court not only did not draw the distinction CIGNA seeks but it held that benefits under the plan as a result of a misleading SPD "f[ell] *comfortably within the scope*" of § 502(a)(1)(B). *Frommert*, 433 F.3d at 270; *see also May Dep't Stores Co. v. Fed. Ins. Co.*, 305 F.3d 597, 601 (7th Cir. 2002) ("The benefits sought were plan benefits; the question was how to compute them. The answer was given by ERISA, but that is just to say that, like many other contracts, pension plans governed by ERISA contain certain provisions implied by law."). True enough, the plaintiffs in *Frommert* (unlike here) sued the plan administrator. But the Second Circuit did not emphasize that fact or otherwise indicate that the relief ordered under § 502(a)(1)(B) would not otherwise have been available. In fact, in the predecessor case to *Frommert – Layaou v. Xerox Corp.*, 238 F.3d 205 (2d Cir. 2001) – the administrator was dismissed from the case before the remand to the district court for the determination of appropriate relief. *See Layaou v. Xerox Corp.*, 330 F.

[Footnote continued from previous page]

would order relief under § 502(a)(1)(B) against CIGNA itself, given the fact that CIGNA was the entity that produced and distributed the notices and disclosures the Court found defective. If the Second Circuit reconsiders the language of *Crocco*, the Court urges that any appropriate relief be ordered against CIGNA itself, as well as the CIGNA Plan.

Supp. 2d 297, 299 (W.D.N.Y. 2004) (identifying defendants as Xerox Corp. and the Xerox pension plan).

Reading "benefits under the terms of the plan" to mean exactly that, regardless of whether those benefits derive from the literal terms of the plan or from the misleading statements in CIGNA's required disclosures, the Court believes the CIGNA Plan itself is an appropriate defendant. The Second Circuit has repeatedly stated that "'in a recovery of benefits claim, . . . *the plan* and the administrators and trustees of the plan in their capacity as such may be held liable.'" *Crocco*, 137 F.3d at 107 (quoting *Leonelli v. Pennwalt Corp.*, 887 F.2d 1195, 1199 (2d Cir. 1989)) (alteration omitted and emphasis added); *see also Wilkins*, 445 F.3d at 583 ("[A]s decisions of this court have made clear, if a summary plan is inadequate to inform an employee of his rights under the plan, ERISA empowers plan participants and beneficiaries to bring civil actions *against plan fiduciaries* for any damages that result from the failure to disclose under 29 U.S.C. § 1132(a)(1)(B).") (quotation marks omitted and emphasis added). Thus, until the Second Circuit rules otherwise, the Court believes that any remedial benefits it orders as a result of the materially misleading statements in CIGNA's notices and disclosures constitute benefits under the terms of the plan, and the CIGNA Plan is liable for those benefits under § 502(a)(1)(B).[5]

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[5] Although CIGNA argues that such an approach would eviscerate the Second Circuit's directive in *Lee v. Burkhart*, 991 F.2d 1004, that only plan administrators be held liable for defective notices, the Court disagrees. For example, ERISA provides that an administrator may be held personally liable at

In light of this holding, the Court need not consider whether any relief ordered under § 502(a)(1)(B) would also be available under § 502(a)(3). That question is particularly complicated for a number of reasons. For one, the Second Circuit has clearly held that relief is not available under § 502(a)(3) where the same relief is available under § 502(a)(1)(B). *See, e.g.*, *Wilkins*, 445 F.3d at 578. But the Second Circuit has not squarely confronted a situation in which relief that would otherwise be available under § 502(a)(1)(B) is not in fact available because, for example, the plan administrator is not a named defendant. Therefore, it is unclear whether in such a case relief would indeed be barred by § 502(a)(1)(B) or whether a court might, through its equitable powers, instead provide relief under § 502(a)(3).

For another, even if the latter course were theoretically possible, the Supreme Court has issued several opinions, beginning with *Mertens v. Hewitt Associates*, 508 U.S. 248 (1993), that have severely curtailed the kinds of relief that are available under § 502(a)(3). *See, e.g.*, *Sereboff v. Mid Atl. Med. Servs., Inc.*, 547 U.S. 356 (2006); *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002).

[Footnote continued from previous page]

a court's discretion if he fails within thirty days to comply with a request for information he is required by ERISA to provide. *See* 29 U.S.C. § 1132(c)(1). Such damages are not at issue here, and the Court does not reach the question of whether its present reasoning would extend to such damages. Nor does the Court address any other ways in which remedies for defective notices may or may not be extended beyond plan administrators.

Mertens and subsequent cases have drawn a sharp line between "traditionally equitable" and "traditionally legal" relief, and have permitted only the former under § 502(a)(3). *See, e.g.*, *Mertens*, 508 U.S. at 255-56; *Great-West*, 534 U.S. at 210 (noting that in *Mertens*, the Court "held that the term 'equitable relief' in § 502(a)(3) must refer to 'those categories of relief that were *typically* available in equity'"). The Supreme Court stated in *Great-West* that "[a]lmost invariably[,] suits seeking (whether by judgment, injunction, or declaration) to compel the defendant to pay a sum of money to the plaintiff are suits for 'money damages,' as that phrase has traditionally been applied, since they seek no more than compensation for loss resulting from the defendant's breach of legal duty." 534 U.S. at 210 (quotation marks and alteration omitted).

Plaintiffs seek to limit this language from *Great-West* to the factual scenario presented in that case, in which the plaintiff sought "to impose personal liability on respondents for a contractual obligation to pay money" *Id.* But it is not clear that such an interpretation is viable in light of *Frommert*. There, the Second Circuit made the following observation about the plaintiffs' claims, which were strikingly similar to those presented here: "While the plaintiffs seek to expand the nature of their claim by couching it in equitable terms to allow relief under § 502(a)(3), the gravamen of this action remains a claim for monetary compensation and that, above all else, dictates the relief available." 433 F.3d at 270 (citing *Gerosa v. Savasta & Co., Inc.*, 329 F.3d 317, 321 (2d Cir. 2003)) (emphasis omitted).

Especially in view of these knotty issues and since the Court has already decided that Plaintiffs may obtain full relief under § 502(a)(1)(B), the Court

need not, and does not, decide whether Plaintiffs could obtain relief under § 502(a)(3).

III.

The most complicated of the many complex issues facing the Court relates to the November 1997 Signature Benefits Newsletter that CIGNA identifies as its ERISA § 204(h) notice. The Court previously determined in its Liability Decision that the transition to Part B worked a significant reduction in the rate of future benefit accrual, meaning that a § 204(h) notice was due to CIGNA's employees. *See* Liability Decision [doc. # 269] at 76. The Court also noted the difficulty in determining whether CIGNA had provided all the information required by then-governing Treasury regulations, or whether Plaintiffs were correct in their assertion that CIGNA had failed to offer a summary of the amendment that was written in a manner calculated to be understood by the average plan participant. *See id.* at 78. Given the material misrepresentations in the § 204(h) notice, however, the Court did not reach the question of precisely what information would have been required, instead resting its decision on CIGNA's affirmatively misleading statements. *See id.* at 78-79. As the Court found, "CIGNA offered statements that misled plan participants into believing that significant reductions in the rate of future benefit accrual were not a component or a possible result of Part B," whether due to the accrual provisions of Part B itself or to the transition from the old to the new plan (i.e., wear away). *Id.* at 80.

The question, then, is what remedy is appropriate in light of CIGNA's violation of ERISA's requirement for an accurate § 204(h) notice. Plaintiffs claim that the obvious and unavoidable

remedy for a defective § 204(h) notice is invalidation of the underlying amendment to which the § 204(h) notice applied. In support of this proposition, they point to *Frommert*, 433 F.3d at 263, in which the Second Circuit held that Xerox's failure to provide a § 204(h) notice regarding a "phantom offset" meant that the provision in question "may not be applied" to employees rehired before the plan was permissibly amended. Plaintiffs argue further that invalidation is required by the language of the statute itself, which states that without a valid notice, a plan "*may not be amended* so as to provide for a significant reduction in the rate of future benefit accrual." 29 U.S.C. § 1054(h) (emphasis added). Thus, Plaintiffs request that

> [t]o remedy the ERISA § 204(h) violation, all members of the class who[m] CIGNA employed after the January 1, 1998 cash balance conversion, including persons rehired after that date, whose benefits are less than the benefits they would have earned under the Part A formula should be restored to the Part A benefit formulas (Tier 1 or Tier 2) that applied on December 31, 1997. . . . Unless and until proper notice of reductions is given, participants must continue to accrue benefits under the more favorable benefit formulas in effect on December 31, 1997.

Plaintiffs' Memorandum on Relief [doc. # 275] at 32-33.

CIGNA disagrees with Plaintiffs' contention for several reasons (even apart from CIGNA's assertion, discussed and rejected above, that Plaintiffs may only recover under ERISA § 502(a)(3) and that the

relief Plaintiffs request is barred under *Great-West*). First, CIGNA argues that the remedy proposed by Plaintiffs bears no relationship to the harm Plaintiffs suffered and would thus constitute a windfall, given that CIGNA sent out various notices informing its employees that they would earn benefits under Part B beginning in 1998. Second, and similarly, Amendment 4 unambiguously froze benefit accruals under Part A, and no one disputes that Amendment 4 was validly noticed under § 204(h) or that CIGNA employees understood that Part A was being frozen. Finally, CIGNA argues that the Court's holding that rehires were not owed § 204(h) notices forecloses any remedy for that group of employees under § 204(h). *See* Defs.' Mem. [doc. # 276] at 19.

Certain of CIGNA's arguments are easily addressed. For example, the Court agrees with CIGNA that the Court's determination in its Liability Decision that no § 204(h) notice was due to rehires, *see* Liability Decision [doc. # 269] at 109, bars the extension of any relief for CIGNA's § 204(h) violation to rehired employees. As the Court stated in its Liability Decision, however, rehires remain eligible for relief regarding the misrepresentations in the Summary of Material Modifications and Summary Plan Descriptions they received. *See* Liability Decision [doc. # 269] at 109.

CIGNA's argument regarding the amendment of § 204(h), on the other hand, is less persuasive. Specifically, the text of the statute was amended in 2001 to add subsection (6)(a), which reads:

> In the case of any egregious failure to meet any requirement of this subsection with respect to any plan amendment, the provisions of the applicable pension plan

> shall be applied as if such plan amendment entitled all applicable individuals to the greater of (i) the benefits to which they would have been entitled without regard to such amendment, or (ii) the benefits under the plan with regard to such amendment.

29 U.S.C. § 1054(h)(6)(a). CIGNA claims that the absence of language prior to 2001 explicitly permitting the invalidation of amendments not preceded by a proper § 204(h) notice means that such a remedy is unavailable under the pre-2001 version of the statute. This position, however, is directly contradicted by *Frommert*, which itself relied on the pre-2001 text of § 204(h) as supporting precisely such a remedy. *See* 433 F.3d at 263.

However, the freeze imposed by Amendment 4 and the sweeping nature of Amendment 5, which established all of Part B, constitute unusual, if not unique, circumstances that render the Court's decision particularly difficult. Benefit accruals under Part A were frozen as of December 31, 1997 by virtue of the validly adopted Amendment 4, and CIGNA provided a valid § 204(h) notice of that freeze in its November 1997 Signature Benefits Newsletter. However, in that same document, CIGNA also assured its employees that Part B was in the works. As soon as CIGNA could "formally adopt the new CIGNA Retirement Plan, with all legally required terms and provisions," Ex. 516 (Nov. 1997 Newsletter), at D00611, it would, and CIGNA promised that the new plan's benefits would be made retroactive to January 1, 1998. Thus, the freeze served essentially as a placeholder, and was intended to disappear once Part B became operative. The Court is aware of no other case, at least in this circuit and perhaps nationally, in which such a

freeze was implemented in the process of transitioning to a cash balance plan.

Furthermore, the Court notes that Plaintiffs have never challenged the validity of either the § 204(h) notice preceding Amendment 4, which put in place the freeze, or Amendment 4 itself. Indeed, the Court can find no fault with CIGNA's § 204(h) notice. CIGNA informed plan participants that "[e]mployees participating in the new CIGNA Retirement Plan will stop earning benefits under the current Pension Plan on December 31, 1997," Ex. 516 (Nov. 1997 Newsletter) at D00611, and even Plaintiffs' communications expert, Prof. James Stratman, testified that he could not draft "clearer text that would explain [this fact] to participants." Defs.' Mem. [doc. # 276] at 23; *see* Ex. 516 (Nov. 1997 Newsletter) at D00611; Ex. 2 (Part A) at D00132 (Am. No. 4). Thus, the one thing that is absolutely clear from CIGNA's communications with its employees is that (with the exception of grandfathered employees) all CIGNA employees would stop receiving benefits under Part A as of December 31, 1997. Yet, what Plaintiffs desire as a remedy is for all CIGNA employees to continue to receive benefits under Part A after December 31, 1997.

Further, and even apart from the question of appropriate notice, Plaintiffs have not challenged the freeze on a substantive basis. They might have argued that the freeze constituted a sham attempt on CIGNA's part to avoid having to provide a § 204(h) notice for Part B, or to avoid a possible return to Part A if Part B were invalidated. They might also have argued that the § 204(h) notice for the freeze, even though technically accurate, should nevertheless be considered void because it was embedded within a

document that the Court has found offered materially misleading statements about Part B, and CIGNA employees might never have accepted the freeze without the assurance that a comparable retirement plan would retroactively take its place. Plaintiffs have argued none of these things, however, and the Court will not make these arguments now on Plaintiffs' behalf.

Finally, CIGNA points to Treasury Regulation 1.411(d)-3, which in its 1997 and 1998 form stated that separate amendments are treated "as one plan amendment" only where the amendments have "the same adoption and effective dates." 26 C.F.R. § 1.411(d)-3(b). Amendments 4 and 5 had different adoption and effective dates, and as a result, CIGNA argues that the Court may not treat them as one amendment for the purpose of invalidation. The Court, however, notes that the regulation cited expands on § 204(g), ERISA's anti-cutback provision, and seeks to close a loophole employers might use in order to reduce employees' benefits in an otherwise-impermissible way. The Court sees a risk here not of an impermissible cutback, but rather of CIGNA exploiting a technicality (a freeze that was intended to "disappear" when no longer needed) to frustrate employees' entitlement to notice under § 204(h).

Somewhat similar concerns motivated the Court's decision in its Liability Decision to ignore the effect of the freeze in determining whether a significant reduction in the rate of future benefit accrual had occurred, triggering the requirement of a § 204(h) notice. Despite the troublesome possibility of legalistic chicanery, however, the Court also recognizes that there is a difference between ignoring the effect of a freeze for the purpose of determining whether a § 204(h) notice is due and

voiding the amendment underlying the freeze, as Plaintiffs now request though they have never challenged the amendment itself. For even if the defective § 204(h) notice regarding Amendment 5 (implementing Part B) means that Part B itself is inoperative, Plaintiffs offer no justification or support for the proposition that the defective § 204(h) notice regarding Amendment 5 should somehow also implicate properly noticed Amendment 4. Nor is the Court unaware of the incongruity of ignoring Amendment 4, an amendment that the parties agree all employees were well aware of, in providing a remedy for a failure of notice regarding Amendment 5.

As noted above, Amendment 5 is also unusual in its scope, in that it created what was essentially an entirely new defined benefit program. *Frommert*, in contrast, involved a much narrower amendment, namely the provision detailing the method of computing interest on the retirement benefits already received by employees who had previously worked for Xerox and later returned. *Frommert*, 433 F.3d at 257. Thus, invalidating that amendment had little effect on the overall functioning of Xerox's benefit plan. Here, however, while it is true that Part A was still operative with respect to at least some CIGNA employees through March 31, 2008, and so it should not be difficult to move class members from one computer spreadsheet to another, the effect on CIGNA's retirement program would be immense. Instead of having shifted almost all of its employee population into Part B, CIGNA would be required to extend Part A to as many as ten or twenty thousand additional employees, significantly complicating and delaying its attempt to move fully into the new plan. Given the noticeably higher

benefit accrual rate under Part A, a widespread return to Part A would also be extremely costly. The Court is particularly reluctant to order such a remedy given that the terms of Part B themselves are legally valid under ERISA and CIGNA provided substantial accurate information to its employees regarding, for example, the method by which they would accumulate pay and interest credits.

In light of all these difficulties, then, and with considerable uncertainty, the Court determines, in an exercise of its equitable powers, that a return to Part A is not an appropriate remedy for CIGNA's deficient § 204(h) notice under the peculiar factual circumstances presented here. The Court recognizes that the Second Circuit expressly held in *Frommert* that "[w]ithout . . . proper notice [under § 204(h)] to Plan participants, *the amendment was ineffective as to them*." 433 F.3d at 268; *see also Hirt v. Equitable Ret. Plan*, 441 F. Supp. 2d 516, 539 ("The statute makes a sufficient notice a precondition to the effectiveness of the plan amendment."). This categorical mandate is also supported by the language of the statute itself. However, the Court is faced here with a situation in which the apparently exclusive remedy of invalidation would harm, rather than benefit, Plaintiffs, for the result would be a return not to a viable benefit plan, but to a freeze. It is unclear whether CIGNA contemplates that plan participants would retain even those benefits accrued under Part B in the intervening years, but the Court is confident that ERISA § 204(g), which prohibits the cutback of previously accrued benefits, would protect all the benefits accrued under Part B prior to the date of judgment. Nevertheless, the ultimate effect would be a prospective freeze of Part B for the members of the Class. Such a remedy

would be cold comfort to Plaintiffs, and the Court does not believe that ERISA, which focuses so emphatically on protecting workers and their reasonable expectations, or equity could require such a result. *See DeFelice v. Am. Int'l Life Assurance Co. of N.Y.*, 112 F.3d 61, 64-65 (2d Cir. 1997) ("*Sullivan* made clear that cases involving ERISA benefits are inherently equitable in nature . . . ."); *Sullivan*, 82 F.3d at 1257-59. Moreover, the Court believes that its remedy for the misrepresentations in CIGNA's Summary of Material Modifications and Summary Plan Descriptions, described below, will at least partly ameliorate the significant reduction in the rate of future benefit accrual worked by the implementation of Part B.

The Court does, however, wish to emphasize its concerns about CIGNA's use of a freeze here and its implications for § 204(h). For by upholding the validity of the freeze amendment, and consequently not ordering the invalidation of Part B, the Court has permitted CIGNA effectively to eviscerate the notice requirements of § 204(h). CIGNA's failure to provide a valid § 204(h) notice meant that CIGNA was able to introduce Part B without the potentially significant controversy that might have resulted had CIGNA been open with its employees about the cuts in benefits CIGNA proposed. Yet a return to the freeze, or the maintenance of Part B, shields CIGNA from the consequences for a defective § 204(h) notice intended by the statute and by the Second Circuit: a return to the more favorable plan provisions pre-dating the amendment. And because the plan participants would return to a frozen Part A, rather than Part A itself, CIGNA would be free to reimplement Part B, preceded by a proper § 204(h) notice, without having been required to return to the

original, more favorable plan terms in the meantime. As a result, plan participants would gain nothing, and CIGNA would face a minor inconvenience, but little else. Without a realistic possibility of returning to Part A, furthermore, the employees would have no leverage by which to encourage CIGNA to reconsider Part B, leverage that § 204(h) notice is specifically intended to provide. *See Frommert*, 433 F.3d at 266-67. Such an outcome is particularly troublesome because, as the Court found in its Liability Opinion, CIGNA never intended the freeze to be permanent. *See* Liability Decision [doc. # 269] at 74-75.

That said, the Court does not believe that CIGNA intentionally implemented the freeze here in order to avoid its responsibilities under § 204(h) with respect to Part B or to attempt to shield itself from the possibility of a return to Part A – and certainly there was no evidence presented to support such an assertion. Further, as the Court noted in its Liability Decision, *see id.* at 76, the combination of a freeze and retroactive benefits may have been more favorable to CIGNA's employees than other alternatives, such as a freeze without retroactive benefits. The Court therefore does not believe that CIGNA was acting in bad faith with respect to the freeze (for had the Court concluded otherwise, the Court believes that it would have ample power to remedy such misconduct). Should other employers, based on the Court's reasoning here, seek to adopt a practice of using a freeze to evade the otherwise-applicable provisions of § 204(h), moreover, the Court is confident that the Treasury Department and the Internal Revenue Service may address the problem through regulation.

Although the Court has determined that a return to Part A is not an appropriate remedy for CIGNA's

violation of § 204(h), the Court does believe that new § 204(h) notices are in order. All members of the Class, including rehires, should be provided a § 204(h) notice regarding the transition to Part B within a reasonable time after judgment has entered. That notice should comply with current Treasury Regulations, including the requirement of providing information sufficient to permit a plan participant to understand how her personal retirement benefits may be affected by the change. *See* Treas. Reg. 54.4980F-1 (Q&A 11). The Court understands that a § 204(h) notice is usually due at the time of the amendment or not at all. However, especially in light of the Court's determination that the invalidation of Part B is not warranted, the Court believes that plan participants at least deserve to know, albeit belatedly, the true effect on their retirement benefits of the transition to Part B.

IV.

Despite the impossibility on these facts of returning to Part A as a remedy for CIGNA's defective § 204(h) notice, Plaintiff nevertheless qualify for alternative relief as a result of the materially misleading statements CIGNA included in its Summary of Material Modifications ("SMM") and Summary Plan Descriptions ("SPDs"). The SMM, embodied in the December 1997 Retirement Information Kit, and the October 1998 and September 1999 SPDs were the most important disclosures CIGNA was required to provide its employees. As detailed in the Liability Decision, these documents, and particularly the SPDs, are intended by ERISA to serve as a primary source from which employees can learn about their pension benefits. As such, ERISA and its accompanying regulations set out strict requirements that the

documents must satisfy. *See* Liability Decision [doc. # 269] at 87-90. The Court found that CIGNA's SMM and SPDs were deficient in several respects as a result of CIGNA's material misrepresentations: first, the disclosures failed to indicate to employees the possibility of wear away and the effect wear away could have on benefit accruals, *see id.* at 90-97; second, the disclosures led plan participants to believe that all of their Part A accrued benefits, including their early retirement benefits, would be preserved in the opening account balance or as part of the Part B protected minimum benefit, *see id.* at 97-100; and third, the disclosures led plan participants to believe that "the accrual rates for both short- and long-term employees under Part B were at least roughly equivalent to those under Part A," *id.* at 104.

The Court believes that the remedy for the first two disclosure violations, regarding wear away and early retirement benefits, is straightforward. Recall that as documented at length in the Liability Decision, CIGNA told its employees that "Each dollar's worth of credit is a dollar of retirement benefits payable to you after you are vested. Under the plan, your benefit will grow steadily throughout your career as credits are added to your account." Ex. 505 (1998 SPD) at D00828; *see also* Ex. 506 (1999 SPD) at D00624 (same). Similarly, in its 1998 SPD, CIGNA stated that plan participants' quarterly statements would show "the amount of accumulated credits in your account. You'll see that amount *continue to grow* every year you are with CIGNA." Ex. 505 (1998 SPD) at D00826 (original emphasis omitted and emphasis added); *see also* Ex. 506 (1999 SPD) at D00623 (same). CIGNA also wrote in its September 1999 SPD, "If you were an employee on

December 31, 1997, or rehired after 1997, *any benefit* you earned under the Pension Plan through December 31, 1997 was converted to an opening account balance in this Pension Plan." Ex. 506 (1999 SPD) at D00624 (emphasis added); *see also* Ex. 505 (1998 SPD) at D00828 (same). These statements taken as a whole created a reasonable expectation on the part of plan participants that Part B would protect *all* Part A benefits, including early retirement benefits, in the opening account balance or the Part B protected minimum benefit, and that Part B benefits would begin accruing immediately.

As Plaintiffs have repeatedly noted, implementing an "A+B," rather than a "greater of A or B," approach would completely resolve both problems.[6] Under A+B, an employee would receive all of her Part A benefits in the form those benefits were previously offered under Part A, plus all the benefits she accrued under Part B, in whatever form those benefits are offered. Because there is no attempt to transition Part A benefits into the Part B accrual formula, there is no need for an opening account balance and thus no question of whether early retirement benefits are a part of that opening account balance or not. Additionally, because any Part B accrued benefits would simply be tacked on to

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[6] As Plaintiffs have also noted, the Pension Protection Act, P.L. 109-280, § 701(a)(1), which added § 204(b)(5)(B)(ii) to ERISA, requires an A+B approach for all cash-balance transitions after June 29, 2005. Thus, the Court's concern about the draconian results of a return to Part A are not present here; in a sense, CIGNA's materially misleading notices and disclosures have simply resulted in its missing the deadline for a non-A+B transition.

the Part A benefits, there would be no possibility of wear away. As the Court indicated in its Liability Decision, CIGNA's notices regarding yearly accruals under Part B were accurate in all respects other than their failure to inform employees that they might not actually be accruing those benefits. Given the materially misleading statements the Court found in the SMM and the SPDs to the effect that wear away was not a likely result of the transition to Part B and that early retirement benefits would be included in the opening account balances and/or the Part B minimum benefit, the Court finds and holds that these representations have become terms of the Plan under the reasoning of *Frommert*.[7] *See Frommert*, 433 F.3d at 265. As such, the Court's remedy here constitutes benefits under the terms of the plan under ERISA § 502(a)(1)(B).

Both CIGNA and Plaintiffs have expressed objections to the Court's proposal. CIGNA maintains its objection to any form of relief for Plaintiffs. Assuming nevertheless that the Court found relief appropriate, CIGNA states in its Memorandum that it would prefer that the Court order the recalculation of opening account balances using the same formula as that applied to participants with 55 or more age

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[7] As the Second Circuit indicated in *Frommert*, any remedy for notice violations should end when the proper disclosures are made. *See Frommert*, 433 F.3d at 263, 268-69. The Court suggested in its Liability Decision, *see* Liability Decision [doc. # 269] at 99 n.40, that CIGNA had disclosed the restrictions on the availability of early retirement benefits in the Supplement to its July 2006 SPD. However, CIGNA has nowhere disclosed the possibility of wear away, and as such, the Court finds that the A+B remedy is appropriate unless and until such disclosure is made.

and service points. *See* Defs.' Mem. [doc. # 276] at 27. The Court rejects this approach, however. For it would not remedy CIGNA's misrepresentations regarding the inclusion of all early retirement benefits – that is, in the opening account balances, the age 62 benefit, rather than the age 55 benefit, would be used.

Further, Plaintiffs contest CIGNA's representation, in reliance on the testimony of Claude Poulin, the Plaintiffs' expert, that this recalculation formula would eliminate wear away. Mr. Poulin's Supplemental Report, perhaps unsurprisingly, favors Plaintiffs' position and weighs against using CIGNA's approach. See Ex. 4, ¶ 28 ("[P]articipants like Ms. Hogan who had more than 55 points on December 31, 1997 experienced a more favorable conversion rate in the calculation of their opening account balance, and hence non-existent *or shorter* wear-away periods.") (emphasis added). CIGNA also objects to an A+B approach because it "would not be consistent with the terms of the Part B SPD or specific communications notifying Plan participants about how opening account balances were created, because under an A+B approach, opening account balances for all Plan participants would be zero." Defs.' Responses [doc. # 280] at 5 n.6. The Court rejects this argument as well and refuses to order a less-than-complete remedy on this basis. Moreover, as CIGNA itself has repeatedly noted, all disclosures post-dating those regarding the transition were accurate, so only a limited number of documents could possibly be implicated by CIGNA's concerns. All of the notices indicating participants' yearly accruals, for example, would now be accurate.

Plaintiffs, for their part, claim that A+B is an inadequate remedy for two reasons. First, not all

class members experienced wear away; some were affected only by Part B's lower benefit accrual rate, which A+B does not change. Second, even those employees who did suffer from wear away may have experienced additional reductions in their overall benefits compared to those they would have earned had Part A continued, again as a result of Part B's lower benefit accrual rate. Plaintiffs claim, then, that "overall the periods of wear-away account for only about 20 to 25% of the benefit losses from the cash balance changes." Plaintiffs' Supplemental Post-Argument Brief on Relief [doc. # 279] at 7. However, Plaintiffs also admit that "[f]or . . . 21,000+ members of the class like Ms. Glanz and Ms. Broderick, the periods of wear-away account for *substantial losses*," *id.* at 9 (emphasis added), and at trial, Mr. Poulin testified, "I cannot say for sure that 100 percent of the employees had experienced wearaway but I would say that the *overwhelming majority* experienced wearaway." Trial Tr. 219 (emphasis added). Also, Plaintiffs happily took advantage of the trial testimony of Lawrence Sher, CIGNA's expert, as well, that it would have been "predictable and known to CIGNA" that "opening balances for *some sizeable group of employees*" "would be less than their protected benefit under the old plan." Trial Tr. 1029:21 to 1030:22 (emphasis added).

The Court recognizes that a return to Part A would result in a larger recovery for Plaintiffs. That fact alone, however, is insufficient to render A+B inadequate, especially in light of Mr. Poulin's testimony regarding the substantial effect on class members' benefits as a result of wear away and the lack of any evidence in the trial record to support Plaintiffs' current complaints. For all of these

reasons, then, the Court rejects both parties' objections to the A+B remedy, which the Court believes is a meaningful, substantial, and appropriate remedy.

The third misrepresentation, regarding so-called comparable benefits, is more complex. The relevant misleading statements appear in the SMM and the § 204(h) notice (discussed above), but not in the SPDs, which is unusual. In fact, the Court is not aware of any Second Circuit case in which the misrepresentations at issue were found only in an SMM. Although SMMs are important disclosures under ERISA, they are required only under certain circumstances, and may be rendered unnecessary by a timely SPD. *See* Liability Decision [doc. # 269] at 87-89. In recognition of these facts, the Court is reluctant to treat a misleading SMM as a misleading SPD – that is, to reform the terms of the plan in conformity with the SMM.

Even if the Court were to treat the SMM as equivalent to an SPD, however, significant problems would nevertheless remain. The only offending statements in the SMM that are not also found in the SPD (and cured by A+B) are the following: "CIGNA is *not* reducing the overall amount it contributes for retirement benefits, nor has the new program been designed to save money," Ex. 508 (Retirement Kit) at D00725; "Other employees and all new hires will be able to earn comparable benefits as career employees under the CIGNA Retirement Plan [i.e., Part B]," *id.*; "Our analysis showed that, in comparison to people with a higher age and service combination, you have plenty of time to take full advantage of the many attractive features of the Retirement Plan . . . ," *id.*; and "Generally speaking, the new Retirement Plan, in comparison with the current Pension Plan [i.e.,

Part A], tends to provide larger benefits for shorter-service employees and comparable benefits for longer-service employees," *id.* at D00729.

Although the Court found that Plaintiffs were correct in arguing that these statements created an impression that Part B's benefits were at least roughly comparable to benefits under Part A, these assurances differ significantly from CIGNA's assertions regarding wear away or early retirement benefits in that there are no concrete means of remedying the former as A+B serves to remedy the latter. Instead, the Court views these statements as more relevant to the § 204(h) notices and CIGNA's attempts to lull its employees into thinking that Part B would not result in a significant reduction in the rate of future benefit accrual. In order to make these statements "true," as Plaintiffs request, the Court would be required entirely to rewrite the Plan's provisions, with no clear guidance from the Plan itself or the relevant notices and disclosures. Plaintiffs concede that the Court does not have such authority. *See* Pls.' Supplemental Brief [doc. # 279] at 13-14. The Court wholeheartedly agrees.

Therefore, for the misrepresentations in CIGNA's notices, the Court orders that the CIGNA Plan provide class members with "A+B," that is, all accrued Part A benefits in the form those benefits were available under Part A, plus all accrued Part B benefits in the form those benefits are available under Part B.

V.

The Court now turns to CIGNA's benefit election notices. As discussed in the Liability Decision, *see* Liability Decision [doc. # 269] at 109-20, the Court found two defects in these notices. First, CIGNA

failed to notify employees that early retirement benefits were only available through the Part A annuity, *see id.* at 114, and second, CIGNA failed to inform employees when their Part A benefits exceeded their Part B benefits (the so-called Minimum Benefits Rule), *see id.* at 118. A reformation of the benefit election notices to take account of the Court's A+B remedy would also address these two defects, as all Part A benefits (including early retirement benefits) would be protected and automatically provided in annuity form, and all Part B benefits would be available as a lump sum or an annuity, making the Minimum Benefits Rule irrelevant. Further, the introduction of A+B would affect the benefits of all retirees, and so all retirees would be eligible for amended notices. The Court will therefore first detail the content of the benefit election notices under the A+B approach. In an abundance of caution, however, the Court will then also address the steps necessary to remedy the misrepresentations identified in the benefit election notices by the Liability Decision, even if no other remedy were provided under § 204(h) or the SMM and SPDs.

The vast majority of retirees elected a lump sum upon retirement, and that lump sum was intended to be the actuarial equivalent of (at least some of) the retirees' Part A benefits, plus (at least some of) their Part B benefits. Due to the provisions of Part A, however, A+B requires that Part A benefits be paid only in annuity form. The result is that the Court is faced with the question of how to convert a previously-paid lump sum into an annuity, in order to calculate the additional annuity to which a retiree may be entitled. This issue essentially boils down to whether retirees who elected a lump sum should be

required to pay back a portion of that lump sum before being eligible to receive additional benefits in annuity form.[8]

CIGNA argues that any retiree whose lump sum payment exceeds the amount he would have received in annuity payments from the date of his retirement until his reelection should be required to pay back the difference to the CIGNA Plan before he can commence annuity payments. CIGNA argues that this approach is necessary to "put[] the participant in the same position vis-a-vis the Plan that the participant would have been in" had A+B been in place at the time the participant retired. Defs.' Mem. [doc. # 276] at 28. Increasing the already-paid lump sum benefit by the difference in value compared to the full-value Part A annuity "would be a windfall to participants by providing them additional monies to which they are not entitled under the terms of the Plan and that were never promised to participants, and that no participant could have elected had he/she been provided with the relevant information." *Id.* at 28-29. The Plan, CIGNA argues, was funded under the assumption that most employees would choose a lump sum (as in fact has been the case), and

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[8] The Court assumes that most retirees will elect to take their additional Part B benefits in the form of a lump sum, given that approximately 95% of retirees chose a lump sum originally. In such a case, concerns regarding a payback would be irrelevant, for the additional Part B benefits could simply be tacked on to the prior lump sum elected, with appropriate interest. A payback is an issue only where a retiree seeks essentially to convert a previously-received lump sum payment into an annuity.

the large-scale shift in these actuarial assumptions[9] that would result from the implementation of A+B, and the compounding of that shift by not requiring a payback, could substantially interfere with the proper funding of the Plan.

Plaintiffs, for their part, reject the idea of a payback. Instead, they would institute an equitable setoff whereby the CIGNA Plan would be credited the amount of the lump sum payment (and reasonable interest), but would be responsible for pro rata annuity payments of the difference between the full-value Part A annuity payments and the monthly payments that would have resulted from an annuitization of the lump sum. This approach would allow retirees to receive the difference in value between the full-value Part A annuity (to which they are entitled under A+B) and the lump sum (which the retirees actually received), without any requirement of a payback. Plaintiffs argue that CIGNA's proposal would severely limit the scope of relief because it is almost inconceivable that any significant portion of affected employees would take advantage of the additional annuity if they were

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[9] The Court notes, however, that the CIGNA Plan also uses actuarial assumptions in calculating participants' lump sum payments, which are the actuarial equivalent of plan participants' annuities. *See* Ex. 2 (Part B) at D00277 (§ 1.21) (defining "Equivalent Actuarial Value" as "an alternative form of benefit which has the equivalent value to the defined benefit of Part B . . . based on the following: (a) Mortality according to the Applicable Mortality Table, and (b) Interest at a rate of 7% per annum").

required first to pay the CIGNA Plan any amount of money.[10]

The Court recognizes that both parties' positions have merit – particularly CIGNA's concern about maintaining the financial viability of the Plan for all its employees, and Plaintiffs' concern that encumbrances on the remedy offered may well transform an otherwise satisfactory proposal into an empty promise. As a consequence, and in the exercise of its equitable authority, the Court has sought to balance these competing interests in the remedy it now orders.

The Court takes as its starting point the premise that a payback should not be required. CIGNA claimed at oral argument that those retirees with the greatest disparity in value between the full-value Part A annuity and the lump sum taken should be

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[10] In making their argument, Plaintiffs rely in part on Treasury Regulation 1.411(a)-11(c)(2)(i), which states that "consent is not valid if a significant detriment is imposed under the plan on any participant who does not consent to a [lump sum] distribution." 26 C.F.R. § 1.411(a)-11(c)(2)(i). Plaintiffs argue that any form of payback to CIGNA would constitute just such a "significant detriment" to Plaintiffs' receipt of their full-value Part A annuities. *See* Pls.' Mem. [doc. # 275] at 38-39. However, it is not clear to the Court that imposing a payback in the process of remedying a prior notice violation is equivalent to imposing a significant detriment on the choice between an annuity and a lump sum in the first instance. Further, the regulation goes on to state that "[w]hether or not a significant detriment is imposed shall be determined by the Commissioner by examining the particular facts and circumstances." 26 C.F.R. § 1.411(a)-11(c)(2)(i). In light of these ambiguities, the Court declines to rely on this regulation in making its determination of the appropriate remedy.

least inconvenienced by the payback, as they would either have accumulated a large credit of otherwise-due annuity payments or they would still have tucked away a substantial portion of their lump sum payment. The Court disagrees. There is no requirement that retirees preserve their lump sum in an easily accessible form or even that they preserve that funding for future living expenses. To force retirees to come up with a possibly substantial amount of cash (especially in the current economic climate) in order to receive additional retirement benefits for which they are otherwise qualified is both unrealistic and contrary to the protective purposes embodied in ERISA. *Cf.* Liability Decision [doc. # 269] at 34-39 (discussing congressional intent to preserve benefits in the context of waivers).

The second fundamental premise of the Court's remedy is that the CIGNA Plan should receive full credit both for the lump sums already paid and for a reasonable amount of interest on those sums since the date of payment. Once the retiree's lump sum plus interest has been annuitized, the CIGNA Plan should subtract the resulting monthly payment from the monthly payment under the annuity originally available under Part A as of the date of the employee's retirement. The retiree should then receive a lump sum of all past-due benefits as of the date of judgment[11] and a prospective stream of monthly payments of the difference going forward. Because the default payment option for retirement benefits under ERISA, as Plaintiffs note, is a

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11 The Court addresses the issue of prejudgment interest on past-due payments in a later section of this opinion.

qualified joint and survivor's annuity, the CIGNA Plan should offer these monthly payments for the duration of the employee's life and the applicable proportion of those payments for the life of the surviving spouse.[12]

The Court intends through this procedure that the lump sum plus interest and the annuity payments otherwise-due to date will be made as mathematically equivalent as possible, to minimize any overpayment on the CIGNA Plan's part. However, to the extent there remains some risk of overpayment, the Court finds that it is equitable that CIGNA, having provided statutorily inadequate benefit elections forms, bear that risk. Finally, although it is true that retirees who elected a lump sum would have received a form of benefit that was not available under Part A, the Court does not believe that retirees should be penalized and effectively prevented from enjoying the potentially substantial additional benefits for which they now qualify simply because they elected to take their retirement benefits in a form available to them at the time.

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[12] CIGNA argues that no posthumous benefits are appropriate because "for participants who have died, the lump sum option has already proven to be the more valuable option for that participant. Any failure to disclose the relative value of benefit options to these participants therefore is harmless error and no remedy should be awarded." Defendants' Reply to Plaintiffs' Supplemental Post-Argument Brief on Relief [doc. # 283], at 3. However, as the language of CIGNA's argument makes clear, CIGNA is attempting to reinsert a detrimental reliance standard. The Court rejects such a standard for the reasons given in the section of this opinion on likely harm.

The second issue to be resolved is how, given that a payback is not required, the new elections should function. Because under A+B the receipt of Part A benefits in annuity form is mandatory, requiring retirees affirmatively to elect such a form of benefit is unnecessary. Therefore, any employee eligible for additional benefits only under Part A should receive a notice from the CIGNA Plan simply informing her of any additional money for which she is eligible (detailing the amount of past-due benefits and interest to be paid in a lump sum as well as the amount of the monthly annuity payments going forward), as well as the reason for these added benefits. Retirees eligible for additional benefits under Part B, however, would still have the option of receiving their Part B benefits as an annuity or a lump sum. Plaintiffs, understandably, are concerned that any affirmative action required by the new notices on the retirees' part will serve only to limit the number of class members who actually receive relief under the Court's order. The Court agrees. Therefore, the new notices for retirees eligible for additional benefits under Part B should offer the option of deciding between an annuity and a lump sum. If, however, the retiree fails to respond with a new election within some reasonable time, for example 90 days, the CIGNA Plan should provide those benefits in lump sum form (in light of the fact that over 95% of retirees currently choose to receive their benefits as a lump sum). Retirees eligible for additional benefits under both Part A and Part B should receive a hybrid notice, informing them of automatic additional lump sum and annuity payments under Part A and providing an election with respect to the additional benefits under Part B

(with an automatic lump sum payment if the election form is not returned).

The Court also recognizes that providing additional annuities for employees whose annuity and lump sum are almost equivalent in present value may offer little real benefit to the retiree while contributing substantially to the CIGNA Plan's administrative expenses. For that reason, the Court adopts as a reference point the relative equivalency standard of 5% established in the 2003 Treasury Regulations, *see* 26 C.F.R. § 1.417(a)(3)-1(c)(2)(iii), and the CIGNA Plan may choose to provide the relevant additional benefit to any employee who received a lump sum worth at least 95% of the present value of her annuity in the form of a supplemental lump sum should the CIGNA Plan find such an approach more convenient.

If A+B were to be rejected on appeal, the Court nevertheless believes that a remedy for the material misrepresentations in CIGNA's benefit election notices would still be appropriate. However, because CIGNA's statements concerned only the exclusion of early retirement benefits from the Part B lump sum and the comparative value of the Part A annuity and the Part B lump sum, the number of affected class members is likely to be relatively small. Plaintiffs have estimated that only approximately 350 to 400 participants would be eligible for relief, given that only those who had accrued early retirement benefits, retired before those benefits phased out at age 65, *and* chose a lump sum rather than an annuity could qualify. *See* Pls.' Supplemental Brief [doc. # 279] at 2. Thus, as an initial matter, the parties should determine which retirees require new notices. In this regard, the Court agrees with CIGNA that a cutoff date of September 30, 2004 is

appropriate with respect to the failure to disclose the availability of early retirement benefits only in annuity form, as new Treasury regulations regarding the description of early retirement benefits became effective on October 1, 2004. *See* Liability Decision [doc. # 269] at 116 n.52.[13] However, the same cannot be said regarding the second disclosure violation. CIGNA promised its employees in the Part B SPDs that it would notify them if their Part A benefits exceeded their Part B benefits, and thus took on an obligation above and beyond any imposed by statute or regulation. *See* Liability Decision [doc. # 269] at 118. As a result, the new regulatory regime that came into force on October 1, 2004 in no way affected CIGNA's obligation to comply with the Minimum Benefits Rule, and any CIGNA retiree who was affected by CIGNA's violation of that rule should also receive a corrected notice.

Turning to the content of the notices, the Court reiterates its concerns, raised above, regarding paybacks and affirmative opt-ins. At oral argument, CIGNA argued that offering an additional annuity without the requirement of a payback would induce essentially all eligible retirees to accept the annuity, despite the fact that, even having been provided

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[13] Plaintiffs assert in their Reply that CIGNA "did not offer any relative value disclosures before May 2006," Pls.' Reply [doc. #277] at 27 n.8, and so argue that the cutoff date of September 30, 2004 should be extended. However, the Court previously determined in its Liability Decision that CIGNA had rectified any non-compliance with the new regulations prior to the Court's decision, and for the reasons stated there, *see* Liability Decision [doc. #269] at 116 n.52, the Court believes that the September 30, 2004 cutoff date is appropriate.

accurate benefit election notices, those retirees might well still have preferred the lump sum. Such may indeed be the case. However, the Court can find no way to determine after the fact whether any employee would have made such a choice (and CIGNA similarly offers no suggestions). Plaintiffs instead request that the Court automatically shift retirees whose annuities had a greater present value than their lump sum payment into an annuity payment plan. Plaintiffs base their position on Treasury regulations stating that no consent to a lump sum payment is valid unless the employee and his or her spouse receive an explanation of the relative values of the optional forms of benefit. *See* 26 C.F.R. § 1.411(a)-11(c)(2)(i). According to Plaintiffs, the defective notices provided by CIGNA mean that any consent given was invalid, and the retirees should revert to the default form of benefit under ERISA, a qualified joint and survivor's annuity. *See* 29 U.S.C. § 1055(a)(1), (c).

The Court agrees that Plaintiffs have the better approach, for retirees who received materially misleading benefit election notices from CIGNA should not now be penalized, and prevented from receiving benefits for which they are otherwise qualified, simply because CIGNA failed to provide them with accurate information at the time the retirees made their original choice among benefit options. Thus, for substantially the same reasons given in the Court's discussion on A+B, the Court does not believe that an affirmative opt-in is appropriate for the new benefit election notices.

Because any employee who qualifies for additional benefits is to receive those benefits without an affirmative opt-in, the notice should not require the retiree to make any form of election.

Rather, the notice should indicate the amount of the lump sum and annuity that the retiree will receive and the reason why these additional monies are being provided. Finally, the Court believes that it is appropriate for the new notices to comply with all current Treasury Regulations to the extent applicable; just as CIGNA has lost the opportunity to implement a non-A+B cash-balance transition, permissible under the old regime, as a result of its materially misleading notices and disclosures, so has it lost the opportunity to provide notices and disclosures that satisfy only the prior, less rigorous regulations.

VI.

Plaintiffs also seek to reassert their claim under ERISA's anti-cutback provision, § 204(g). To the extent Plaintiffs claim that any provision of Part B resulted in an impermissible cutback of their accrued benefits, the Court rejected their claim in its Liability Decision. *See* Liability Decision [doc. # 269] at 121. However, to the extent Plaintiffs argue under § 204(g) that a cutback occurred due to mismanagement of data on CIGNA's part,[14] the Court did not address that issue. Nor had the parties briefed this issue previously. Instead, the parties represented to the Court that this aspect of Plaintiffs' claims was the subject of settlement negotiations and did not need to be resolved as part

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[14] Plaintiffs offer several examples of this alleged mismanagement, such as CIGNA's failure to include data on the Free 30% Survivor's Benefit in the new Part B database and its individual failures to maintain accurate information with respect to Patricia Flannery and Janice Amara. *See* Pls.' Reply [doc. # 277] at 28-29.

of the Court's comprehensive Liability Decision. As such, the Court was surprised, and particularly dismayed, to see this claim revived in Plaintiffs' Memorandum on Relief, submitted after the trial was completed and indeed after the Liability Decision was issued. *See* Pls.' Mem. [doc. # 275] at 40-41. Because the Court was not squarely presented with this issue previously, the Court has not had the opportunity to hear arguments from both parties or to make findings of fact and conclusions of law. Further, the Court does not intend to reopen the trial record at this point or to conduct an additional trial on this issue. Plaintiffs are free to pursue this claim in another action, however, as it was removed from the case before trial. In this respect, the Court finds that the statute of limitations on any such claim would be tolled during the pendency of this action.

VII.

Finally, the Court addresses the issue of prejudgment interest on any past-due benefits owed to class members who have already retired. The determination of whether to award prejudgment interest rests with the discretion of the district court. *See Jones v. UNUM Life Ins. Co. of Am.*, 223 F.3d 130, 139 (2d Cir. 2000). In exercising this discretion, the Second Circuit has directed courts to consider "(i) the need to fully compensate the wronged party for actual damages suffered, (ii) considerations of fairness and the relative equities of the award, (iii) the remedial purpose of the statute involved, and/or (iv) such other general principles as are deemed relevant by the court." *Id.* (quotation marks omitted). The same considerations should inform the Court's decision regarding the appropriate rate of prejudgment interest, *see id.*, as there is no federal

statute setting a standard interest rate for prejudgment interest.

As the Court has already indicated, this analysis applies only to those plan participants who have *already retired* and commenced benefits; employees who will prospectively receive A+B as a result of this opinion are not entitled to prejudgment interest. In the Court's view, under general principles of equity and the remedial principles of ERISA, the CIGNA Plan is not entitled to retain the time value of the money it has improperly (albeit in good faith) withheld from the retired members of the Class. For as the Second Circuit has noted, "[i]f benefits are not paid until after they are due, beneficiaries receive less monetary value than they are contractually entitled to. Furthermore, they would presumably need to borrow to meet their accumulating obligations, thereby incurring interest expenses [that] they might never recover." *Dobson v. Hartford Fin. Servs. Group, Inc.*, 389 F.3d 386, 395 (2d Cir. 2004); *see also Jones*, 223 F.3d at 139-40. As the D.C. Circuit also observed in *Moore v. CapitalCare, Inc.*, 461 F.3d 1, 13 (D.C. Cir. 2006), prejudgment interest to a plan participant is "presumptively" appropriate because "to permit the fiduciary to retain the interest earned on wrongfully withheld benefits would amount to unjust enrichment – a fiduciary would benefit from failing to pay ERISA benefits. . . . [P]rejudgment interest [also] ensures that a beneficiary is fully compensated, including for the loss of the use of money that is his." Prejudgment interest is especially appropriate here in light of the fact that the CIGNA Plan will be credited with a reasonable rate of return on its lump sum payments to retirees in the calculation of the equitable setoffs.

With respect to the rate of prejudgment interest, although some courts have used the federal interest rate for *post*-judgment interest, *see* 28 U.S.C. § 1961(a), the Second Circuit has cautioned that

> [t]he suitability of that postjudgment rate for an award of prejudgment interest will depend on the circumstances of the individual case, and the court need not limit the award of prejudgment interest to the rate at which the injured party would have lent money to the government. The court may, for example, consider whether the plaintiff would have invested the money at some higher rate, or it may take into account the rate of interest the defendant would have had to pay to borrow the money it withheld from the plaintiff.

Jones, 223 F.3d at 139 (citations omitted). The Court does not consider the federal post-judgment interest rate, which is measured by interest on short-term, risk-free obligations, to be appropriate in this case. Rather, in the interest of fairness, the Court believes that the rate should be the same as that used with respect to the CIGNA Plan's lump sum payments, namely, a reasonable rate of return. Both the CIGNA Plan and the plan participants invested on a moderate- to long-range time horizon, given the former's interest in funding the Plan and the latter's interest in saving enough money to last throughout retirement. Thus, in light of these considerations, the Court believes that a reasonable and appropriate rate of interest for payments past due would be the rate used in the same time period by the CIGNA Plan to calculate the lump-sum present value of retiring participants' annuities (i.e., the equivalent actuarial value). These interest rates should apply

to all benefits actually due between the implementation of Part B on January 1, 1998 and the date of judgment.

In ordering the payment of prejudgment interest, the Court acts under ERISA § 502(a)(1)(B). Although the Second Circuit had previously indicated that such an award might also be possible under ERISA § 502(a)(3), *see Dunnigan v. Met. Life Ins. Co.*, 277 F.3d 223, 229 (2d Cir. 2002) ("Where interest is sought to make the plaintiff whole by eliminating the effect of a defendant's breach of a fiduciary duty, we see no reason why such interest should not be deemed 'appropriate equitable relief' within the scope of § 502(a)(3)(B)."), the Court is unsure whether prejudgment interest remains available under § 503(a)(3) after *Great-West*. The Court's doubts are further reinforced by other, more recent Second Circuit case law suggesting the availability of prejudgment interest under § 502(a)(1)(B), discussed below, and the general directive that relief available under § 502(a)(1)(B) should not instead be awarded under § 502(a)(3), *see Wilkins*, 445 F.3d at 578.

The theory behind an award of prejudgment interest under § 502(a)(1)(B) is that a pension plan, like CIGNA's, that requires payment of benefits at certain intervals also includes an implicit provision that benefits unreasonably delayed or withheld will be supplemented by interest when finally paid. *See* Ex. 2 (Part A) at D00039 (§ 4.1(b)); Ex. 1 (Part B) at D00296-D00297 (§ 5.7); *Dobson*, 389 F.3d at 395. As another court in this district has explained,

> The mandatory language of the provision for the monthly payment of benefits makes clear that the payment of such benefits *at the time*

> *provided* is the "benefit" accorded a beneficiary under the Plan. Thus, such a beneficiary is entitled to the value of his or her benefits *at the time they are due* and thus, in recognition of the time value of money, if those benefits are not paid when they are due, but are instead unreasonably delayed and paid later, the value of those benefits must include accrued interest to replace their otherwise diminished value to the plaintiff.

Dobson v. Hartford Life & Accident Ins. Co., 518 F. Supp. 2d 365, 374 (D. Conn. 2007). Such "[i]mplied agreements to pay interest on delayed disbursements of owed money fit squarely within [the] tradition of common law contract interpretation." *Dobson*, 389 F.3d at 399 (quoting *Spalding v. Mason*, 161 U.S. 375, 396 (1896)). Reading CIGNA's Plan to incorporate an implied provision regarding interest on past-due benefits – as the Court finds in this case – also furthers the purposes of ERISA. For without such an incentive for an employer to pay benefits in a timely manner, the employer "could accumulate the cash, conserve its resources, earn interest off the improperly retained funds, and deprive . . . beneficiaries of desperately needed benefits without contractual consequences." *Id.* at 395.

The Court does not suggest that the CIGNA Plan had an improper motive in offering the benefits it did, and indeed the Court found the provisions of Part B themselves lawful. However, the Court does believe that equity, the reasonable expectations of the parties, the intent of ERISA, and the language of Part A and Part B all weigh strongly in favor of an implied contractual provision for interest on

withheld benefits and the corresponding recovery of that interest under § 502(a)(1)(B).

VIII.

To summarize, then, the Court hereby declares that the manner in which CIGNA implemented the transition to Part B was unlawful as a result of CIGNA's materially misleading notices and disclosures, and that the terms of Part B have been correspondingly modified by CIGNA's October 1998 and September 1999 Summary Plan Descriptions. Accordingly, in light of CIGNA's statements in those publications that all early retirement benefits would be protected and CIGNA's failure to warn of wear away, the Court orders and enjoins the CIGNA Plan to reform its records to reflect that all class members must now receive "A+B" benefits; that is, all class members must receive their accrued benefits under Part A, in the form in which those benefits were available under Part A, and in addition their accrued benefits under Part B, in whatever form those benefits are available under Part B. CIGNA is also ordered to supply accurate § 204(h) notices to all members of the Class, including rehires, and must also issue an updated and corrected Summary Plan Description for Part B. As a result of CIGNA's failure to comply with ERISA's requirements for benefit election notices, the Court further orders the CIGNA Plan to provide new, accurate benefit election notices that reflect the Court's determinations above regarding the appropriate procedure for providing additional remedial benefits. All of these notices must satisfy current regulations to the extent relevant, and must be provided within a reasonable period. The remedial benefits, disbursed in the manner described above, constitute "benefits under the terms of the plan" under ERISA

§ 502(a)(1)(B). Any class member who has already retired and commenced receiving benefits is further entitled to prejudgment interest, at the rate used in the same time period by the CIGNA Plan to calculate the lump sum present value of retiring participants' annuities, on any benefits due between January 1, 1998 and the date of judgment.

The Court also recognizes that the benefits awarded by this opinion are substantial, and that the law on which they are based is anything but settled. In light of the complexity of the issues and the weighty interests at stake, as well as the possibility that some or all of this opinion and the Liability Decision may be reversed on appeal, the Court believes that a stay is appropriate. *See* Fed. R. Civ. P. 62(c) ("While an appeal is pending from . . . [a] final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights."). In making its determination, the Court has considered the factors laid down by the Second Circuit in *Hirschfeld v. Board of Elections*, 984 F.2d 35 (2d Cir. 1992): "(1) whether the movant will suffer irreparable injury absent a stay, (2) whether a party will suffer substantial injury if a stay is issued, (3) whether the movant has demonstrated a substantial possibility, although less than a likelihood, of success on appeal, and (4) the public interests that might be affected." *Id.* at 39 (quotation marks omitted); *see also In re Turner*, 207 B.R. 373, 375 (2d Cir. B.A.P. 1997); *Cohen v. Met. Life Ins. Co.*, No. 00 Civ. 6112 (LTS)(FM), 2008 WL 1826484, at *1 (S.D.N.Y. Apr. 22, 2008). The Second Circuit has also clarified that the requisite degree of likelihood of success on the merits varies according

to the court's assessment of the other factors: "The probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury plaintiff will suffer absent the stay. Simply stated, more of one excuses less of the other." *Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002) (quotation marks and alteration omitted).

Although CIGNA has not argued, nor could it credibly claim, that it would suffer an irreparable injury if the stay is denied, neither will Plaintiffs suffer a substantial injury if the stay is granted. The Court does not discern a public interest in granting or denying a temporary stay of the remedies in this opinion until they are reviewed by the Second Circuit; indeed, the only public interest the Court sees here, and it is a strong one, is for clarity in this muddled yet extremely important area of the law. Finally, and as repeatedly noted above and in the Liability Decision, the lack of clear guidance in the law and the unusual factual circumstances present in this case have convinced the Court that the outcome of any appeal is far from certain, and the Court believes a stay is therefore both appropriate and necessary.

Thus, the Court hereby ORDERS that all of the remedies laid out in this opinion are to be stayed pending their review by the Court of Appeals for the Second Circuit. However, in recognition of the Plaintiffs' interest in guaranteeing that any award affirmed is indeed paid, the Court further ORDERS that CIGNA post a bond in an appropriate amount **no later than July 11, 2008**. The parties should confer on an appropriate amount, and if they are unable to agree, they can present the issue to the Court for decision. Finally, the Court ORDERS Plaintiffs to file a brief on the issue of attorneys' fees

no later than July 11, 2008. The parties should then respond in accordance with the Local Rules. **The Clerk is directed to enter final judgment.**

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: June 13, 2008.

APPENDIX D

29 U.S.C. § 1022 provides:

§ 1022. Summary plan description

(a) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 1024(b) of this title. The summary plan description shall include the information described in subsection (b) of this section, shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 1024(b)(1) of this title.

(b) The summary plan description shall contain the following information: The name and type of administration of the plan; in the case of a group health plan (as defined in section 1191b(a)(1) of this title), whether a health insurance issuer (as defined in section 1191b(b)(2) of this title) is responsible for the financing or administration (including payment of claims) of the plan and (if so) the name and address of such issuer; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names,

titles, and addresses of any trustee or trustees (if they are persons different from the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan including the office at the Department of Labor through which participants and beneficiaries may seek assistance or information regarding their rights under this chapter and the Health Insurance Portability and Accountability Act of 1996 with respect to health benefits that are offered through a group health plan (as defined in section 1191b(a)(1) of this title), the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 1133 of this title), and if the employer so elects for purposes of complying with section 1181(f)(3)(B)(i) of this title, the model notice applicable to the State in which the participants and beneficiaries reside.

29 U.S.C. § 1024 provides in relevant part:

§ 1024. Filing with Secretary and furnishing information to participants and certain employees

* * *

(b) Publication of summary plan description and annual report to participants and beneficiaries of plan

Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, a copy of the summary plan description, and all modifications and changes referred to in section 1022(a)(1) of this title—

(A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or

(B) if later, within 120 days after the plan becomes subject to this part.

The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, every fifth year after the plan becomes subject to this part an updated summary plan description described in section 1022 of this title which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period this sentence shall not apply. Notwithstanding the foregoing, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, the summary plan description described in section 1022

of this title every tenth year after the plan becomes subject to this part. If there is a modification or change described in section 1022(a) of this title (other than a material reduction in covered services or benefits provided in the case of a group health plan (as defined in section 1191b(a)(1) of this title)), a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan. If there is a modification or change described in section 1022(a) of this title that is a material reduction in covered services or benefits provided under a group health plan (as defined in section 1191b(a)(1) of this title), a summary description of such modification or change shall be furnished to participants and beneficiaries not later than 60 days after the date of the adoption of the modification or change. In the alternative, the plan sponsors may provide such description at regular intervals of not more than 90 days. The Secretary shall issue regulations within 180 days after August 21, 1996, providing alternative mechanisms to delivery by mail through which group health plans (as so defined) may notify participants and beneficiaries of material reductions in covered services or benefits.

(2) The administrator shall make copies of the latest updated summary plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent

information to all participants (including such places as the Secretary may prescribe by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrator (other than an administrator of a defined benefit plan to which the requirements of section 1023(f) of this title applies) shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 1023(b)(3) of this title and such other material (including the percentage determined under section 1023(d)(11) of this title) as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(5) Identification and basic plan information and actuarial information included in the annual report for any plan year shall be filed with the Secretary in an electronic format which accommodates display on the Internet, in accordance with regulations which shall be prescribed by the Secretary. The Secretary shall provide for display of such information included in the annual report, within 90 days after the date of the filing of the annual report, on an Internet

website maintained by the Secretary and other appropriate media. Such information shall also be displayed on any Intranet website maintained by the plan sponsor (or by the plan administrator on behalf of the plan sponsor) for the purpose of communicating with employees and not the public, in accordance with regulations which shall be prescribed by the Secretary.

* * *

OPPOSITION BRIEF

No. 09-804

In The
Supreme Court of the United States

CIGNA CORPORATION AND CIGNA PENSION PLAN,

Petitioners,

v.

JANICE C. AMARA, GISELA R. BRODERICK, ANNETTE S. GLANZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION

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February 5, 2010

QUESTIONS PRESENTED

1. Whether CIGNA can challenge the Second Circuit's "likely prejudice/harmless error" standard for violations of ERISA's disclosure requirements when it did not challenge that standard in the district court, the court of appeals, or in a petition for rehearing en banc.

2. Whether a district court, after finding misleading statements in a summary of material modification ("SMM") and summary plan description ("SPD"), is precluded from finding a violation of ERISA's disclosure requirements, which are based on whether the SPD and SMM are "written in a manner calculated to be understood by the average plan participant" and are "sufficiently accurate," unless the district court conducts individual hearings into how each individual participant detrimentally relied on the misleading statements.

PARTIES TO THE PROCEEDINGS

The petitioners in 09-804 are the CIGNA Corporation and the CIGNA Pension Plan.

The respondents are Janice C. Amara, Gisela R. Broderick, Annette S. Glanz and a class of all other participants in the CIGNA Pension Plan who are similarly situated.

TABLE OF CONTENTS

Questions Presented i

Parties to the Proceedings ii

Statement of the Case. 1

Reasons for Denying the Writ. 3

Conclusion 13

TABLE OF AUTHORITIES

Cases

Aiken v. Policy Mgmt. Systems Corp.,
13 F.3d 138 (4th Cir. 1993). 8

Amara v. CIGNA, 2002 U.S. Dist. LEXIS 25947
(D.Conn. Dec. 20, 2002)..... 6

American Fed. of Grain Millers v. International Multifoods Corp., 116 F.3d 976 (2d Cir. 1997)..... 11

Arnold v. Arrow Transport Co., 926 F.2d 782
(9th Cir. 1991). 6

Bard v. Boston Shipping Association,
471 F.3d 229 (1st Cir. 2006). 11

Bergt v. Retirement Plan. for Pilots Employed by MarkAir, Inc., 293 F.3d 1139 (9th Cir. 2002). 11

Blackshear v. Reliance Standard Life Insurance Co., 509 F.3d 634 (4th Cir. 2007)..... 11

Bouboulis v. Transport. Workers, 442 F.3d 55
(2d Cir. 2006)..... 11

Branch v. G. Bernd Co., 955 F.2d 1574 (11th
Cir. 1992). 9

Burke v. Kodak Retirement Inc. Plan,
336 F.3d 103 (2d Cir. 2003), *cert. denied*,
540 U.S. 1105 (2004). 3, 6, 8, 11

Burstein v. Ret. Account Plan for Employees of Allegheny Health Education and Research Foundation, 334 F.3d 365 (3d Cir. 2003). 7, 11

Chiles v. Ceridian Corp., 95 F.3d 1505 (10th Cir. 1996). 8, 11

Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73 (1995). 10, 12

Edwards v. State Farm Mutual Automobile Insurance Co., 851 F.2d 134 (6th Cir. 1988). 7

Frommert v. Conkright, 433 F.3d 254 (2d Cir. 2006). 7, 11

Govoni v. Bricklayers, Masons & Plasterers Local 5 Pension Fund, 732 F.2d 250 (1st Cir. 1984). 8

Greeley v. Fairview Health Services, 479 F.3d 612 (8th Cir. 2007). 8

Halbach v. Great-West Life and Annuity Ins. Co., 561 F.3d 872 (8th Cir. 2009). 11

Heffner v. Blue Cross & Blue Shield of Ala., Inc., 443 F.3d 1330 (11th Cir. 2006). 9

Heidgerd v. Olin Corp., 906 F.2d 903 (2d Cir. 1990). 10

Helwig v. Kelsey-Hayes Co., 93 F.3d 243 (6th Cir. 1996), *cert. denied*, 519 U.S. 1059 (1997). 11

Hightshue v. AIG Life Insurance Co.,
135 F.3d 1144 (7th Cir. 1998)..... 8

Joyce v. Curtiss-Wright Corp., 171 F.3d 130
(2d Cir. 1999)..... 11

*Kennedy v. Plan Administrator for DuPont
Sav. & Investment Plan*, 129 S. Ct. 865 (2009)..... 11

Lambert v. Wicklund, 520 U.S. 292 (1997). 11

Layaou v. Xerox Corp., 238 F.3d 205
(2d Cir. 2001)..... 11

Marolt v. Alliant Techsystems, Inc., 146 F.3d 617
(8th Cir. 1998). 8-9

*McKnight v. Southern Life & Health Insurance
Co.*, 758 F.2d 1566 (11th Cir. 1985)..... 9, 11

MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118
(2007)..... 4

Estate of Ritzer, 822 F. Supp. 951 (E.D.N.Y. 1993). 6

Schad v. Stamford Health System, 2009 WL
4981271, 2009 U.S. App. LEXIS 27939
(2d Cir. Dec. 21, 2009)..... 7

Sereboff v. Mid Atlantic Medical Services,
547 U.S. 356 (2006)..... 3

Spitz v. Tepfer, 171 F.3d 443 (7th Cir. 1999)..... 9, 11

Tocker v. Philip Morris, 470 F.3d 481 (2d Cir. 2006)..... 7, 11

Washington v. Murphy Oil USA, Inc., 497 F.3d 453 (5th Cir. 2007)..... 7, 11

Weinreb v. Hospital for Joint Diseases Orthopaedic Institute, 404 F.3d 167 (2d Cir. 2005)..... 7

Wilkins v. Mason Tenders District Council Pension Fund, 445 F.3d 572 (2d Cir. 2006)..... 7

Wilson v. Southwestern Bell Telegraph, 55 F.3d 399 (8th Cir. 1995)..... 6

Statutes and Regulations

ERISA §102, 29 U.S.C. §1022..... 5

ERISA §402(b)(3), 29 U.S.C. §1102(b)(3). 12

29 C.F.R. 2520.102-(3)(l)..... 5

Miscellaneous

Lisa J. Bernt, "Finding the Right Jobs for the Reasonable Person in Employment Law," 77 *UMKC L. Rev.* 1 (Fall 2008)..... 6

Eugene Gressman, et al., *Supreme Court Practice*, 9th ed.. 12

Charles R. Peterson, Note: "ERISA Does Not Give Employers a Free Pass," 9 *Nev. L.J.* 704 (Spring 2009). 5

Michael A. Valenza, "Accuracy Is Not a Lot to Ask" 6 *Transactions (Tenn. J. Bus. L.)* 361 (Spring 2005). 5

Statement of the Case

After a seven-day bench trial with sixteen witnesses (only one of whom was called by the CIGNA petitioners) and over 500 exhibits, the District Court (Judge Mark R. Kravitz) issued a 122-page decision finding that CIGNA violated ERISA's disclosure requirements by describing a large benefit reduction as an "enhancement" with no "cost savings" to CIGNA in which "each dollar's worth of credits is a dollar of retirement benefits payable to you." Pet. App. at 31a, 34a, 40a. The District Court found that CIGNA's disclosures to its employees about the changes to their pension plan were "inadequate under ERISA and in some instances, downright misleading" and that CIGNA engaged in "efforts to conceal the full effects" of the changes "to avoid the employee backlash likely to result from a thorough discussion" of benefit reductions and periods of "wear-away" in which participants would not earn any additional retirement benefits. *Id.* at 8a, 114a, 137a.[1] The District Court found that CIGNA's efforts to conceal the full effects of the changes were prejudicial because they "'deprived [plaintiffs] of the opportunity to take timely action ...' whether that action was protesting at the time Part B was implemented, leaving CIGNA for another

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[1] As the District Court explained: "Wear away means that there are periods of time in which the employee's account balance is less than the employee's minimum benefit.... [I]n effect, where there is wear away, even though the employee continues to work for CIGNA and continues to receive benefit credits, the employee's expected retirement benefits have not grown beyond what the employee was entitled to under [CIGNA's Pension Plan] as of December 31, 1997." Pet. App. 24a-25a.

employer with a more favorable pension plan, or filing a lawsuit like this one." *Id.* at 137a. The District Court determined that CIGNA had failed to show that "even a single employee" had "'actual knowledge' of the undisclosed information." *Id.* at 166a; *see also id.* at 133a-136a. In response to the questions from the Second Circuit panel during oral argument, CIGNA's counsel conceded that CIGNA's "notice here failed" and that the "underlying disclosures...that were being challenged" were "totally inadequate." CD of May 21, 2009 Oral Argument, at 2:33:45 - 2:34:01.

In a separate decision, the District Court ordered remedial relief based on CIGNA's misleading statements about the periods of "wear-away" and the "relative value" of benefit options.The District Court held that CIGNA could not enforce the undisclosed wear-away provisions that kept many participants from earning additional pension benefits for years. Pet. App. at 195a-196a. It also required benefits to be restored to participants who mistakenly elected their pensions as lump sums because CIGNA concealed that the monthly pension payments had a "greater present value." *Id.* at 155a-156a, 201a-207a.[2]

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[2] The District Court declined to provide relief in the form of benefits for the violations of the ERISA "Section 204(h)" notice requirements that would have been most costly to CIGNA. Pet. App. at 190a-194a. The District Court also declined to provide relief based on CIGNA's misleading representations in the SMM that the cash balance benefits would be "comparable" or "larger" than under the preceding benefit formulas. *Id.* at 200a-201a. On January 4, 2010, the *Amara* plaintiffs-appellants filed a petition for a writ of certiorari (09-784) concerning the Second Circuit's affirmance of these rulings, asking that the petition be held

On October 6, 2009, the Second Circuit summarily affirmed the District Court's decisions on both liability and relief, commending the District Court for its "two well-reasoned and scholarly opinions." Pet. App. at 4a.

Reasons for Denying the Writ

I. The main issue that CIGNA's petition raises is a challenge to the "likely prejudice/harmless error" standard for violations of ERISA's disclosure requirements that the Second Circuit established in *Burke v. Kodak Ret. Inc. Plan*, 336 F.3d 103 (2d Cir. 2003), *cert. denied*, 540 U.S. 1105 (2004). CIGNA contends that the standard is in conflict with an "individualized" "reliance" or "prejudice" that some circuits use. Pet. at 2.

A. This issue is not properly presented to this Court because, in the proceedings below, CIGNA did not challenge the "likely prejudice/harmless error" standard. Instead, at each stage of the litigation, CIGNA contended that it should prevail under that standard. CIGNA also never requested that the Second Circuit sit *en banc* to consider modifying its "likely prejudice/harmless error" standard.

It is a basic axiom that this Court does not accept certiorari on issues that are not raised or passed upon below. *See, e.g., Sereboff v. Mid Atl. Med. Servs.*, 547

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pending resolution of the question presented in *Conkright v. Frommert* (08-810) on a district court's "allowable discretion" in "calculating additional benefits due under the plan" as a result of violations of ERISA.

U.S. 356, 368 n.2 (2006) ("Neither the District Court nor the Court of Appeals considered the argument that Mid Atlantic's claim was not 'appropriate' apart from the contention that it was not 'equitable,' and from our examination of the record it does not appear that the Sereboffs raised this distinct assertion below. We decline to consider it for the first time here"); *cf. MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 125 (2007) (issue was properly before Court where it was "raised and preserved" in "a few pages" of appellate brief, although precedent precluded panel from taking jurisdiction).

In this case, CIGNA could have preserved the issue of a circuit conflict in its briefing, recognizing that Second Circuit precedent prevented the panel from overruling *Burke*, and asked for a rehearing *en banc* to consider that issue. But CIGNA did not do this. The first time that CIGNA questioned the "likely prejudice" standard was in a motion to stay the mandate after the summary affirmance. There, CIGNA stated, for the first time, that it intended to file a petition for certiorari with this Court challenging the Second Circuit's prejudice standard.

B. Although CIGNA decries a "deep division," Pet. at 20, the circuit precedents on which CIGNA relies were decided before this Court denied certiorari in *Burke* in 2004. Moreover, the predominant scholarly view is that "with the passage of time, the circuits have generally moved ... to the more lenient standards of the Second and Fifth Circuits" in ruling on whether employees can secure relief for representations in a summary plan description ("SPD") that conflict with a

Plan document. Charles R. Peterson, Note: "ERISA Does Not Give Employers a Free Pass," 9 *Nev. L.J.* 704, 708 (Spring 2009); *accord* Michael A. Valenza, "Accuracy Is Not a Lot to Ask," 6 *Transactions (Tenn. J. Bus. L.)* 361, 362, 392-93 (Spring 2005) (recognizing "trend" in the "recent [2003] decisions" by the Second Circuit in *Burke* and the Third Circuit in *Burstein* that "signal a shift away from the common law imposition of technical requirements"). CIGNA's depiction of "hopelessly divided" circuits or "irreconcilable standards" (Pet. at 1, 10, 12) does not reflect the legal standards that the circuits have adopted or the movement that the case law and commentary show.

The statutory standard at issue assesses whether an SPD or a summary of material modification ("SMM") is "written in a manner calculated to be understood by the average plan participant" and is "sufficiently accurate and comprehensive to reasonably apprise participants and beneficiaries of their rights and obligations under the plan." ERISA §102(a), 29 U.S.C. §1022(a). The SPD or SMM (in the event plan provisions are being materially modified) must describe "the circumstances which may result in disqualification, ineligibility or denial or loss of benefits." ERISA §102(b); *see also* 29 C.F.R. 2520.102-(3)(l); *Burke*, 336 F.3d at 110. By its terms, ERISA §102(a) does not require individualized reliance to establish a violation of the SPD requirements. If a showing of prejudice is required, "likely" prejudice is consistent with a statute that is concerned with the

effect of disclosures on "the average plan participant."[3]

In *Burke*, the Second Circuit determined that "a prejudice standard is more consistent with ERISA's objective to protect the employee against inadequate SPDs" and that a "rule requiring...detrimental reliance ...imposes an insurmountable hardship on many plaintiffs." 336 F.3d at 112 (quoting *Estate of Ritzer*, 822 F.Supp. 951, 955-56 (E.D.N.Y. 1993)). The Second Circuit required the plan participant or beneficiary to show that he or she was "likely to have been harmed as a result of a deficient SPD" and provided that "[w]here a participant makes this initial showing, "the employer may rebut it through evidence that the deficient SPD was in effect a harmless error." *Id.* at 113. The Second Circuit concluded that "[t]his 'likely

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[3] Most courts decide whether the "average plan participant" standard in ERISA §102(a) has been violated as a matter of law, or a mixed question of law and fact, without "an inquiry into the subjective perception of the individual participants." *Wilson v. Southwestern Bell Tel.*, 55 F.3d 399, 407 (8th Cir. 1995) (whether SPD is calculated to be understood by the "average plan participant" "appears to be an objective standard"); *accord Arnold v. Arrow Transp. Co.*, 926 F.2d 782, 785 (9th Cir. 1991) (whether the SPD's descriptions "satisfy ERISA is a legal question"); *Amara v. CIGNA*, 2002 U.S. Dist. LEXIS 25947, *9 (D.Conn. Dec. 20, 2002) (DJS) (class certification ruling that "whether the SPD is misleading" is "a legal question common to each class member"). *See generally* Lisa J. Bernt, "Finding the Right Jobs for the Reasonable Person in Employment Law," 77 *UMKC L. Rev.* 1 (Fall 2008) (courts invoke a "reasonable" or "average" person standard "when looking to set some objective or universal (as opposed to 'subjective,' or individualized) standard of conduct"; "By using the reasonable person device in this way, we are asking: What ought the employer have done, and has the employer done it?").

prejudice' standard avoids the use of harsh common law principles to defeat employees' claims based on a federal law designed for their protection." *Id.*[4]

As CIGNA's petition indirectly concedes, to secure relief for a misleading or inadequate SPD, the Third, Fifth and Sixth Circuits do not require the showing of "likely prejudice" that the Second Circuit demands–much less the individualized reliance or actual prejudice standard that CIGNA wants. *See* Pet. at 16-17; *Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. and Research Found.*, 334 F.3d 365, 381 (3d Cir. 2003) ("a plan participant who bases a claim for plan benefits on a conflict between an SPD and plan document need neither plead nor prove reliance on the SPD"); *Washington v. Murphy Oil USA, Inc.*, 497 F.3d 453, 458-59 (5th Cir. 2007) (the "employee need not show reliance or prejudice"); *Edwards v. State Farm Mutual Automobile Insurance Co.*, 851 F.2d 134, 137 (6th Cir. 1988) ("precedent does not dictate that a claimant who has been misled by summary descriptions must prove detrimental reliance"). Accordingly, in these circuits, the answer to CIGNA's question presented–even assuming the

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[4] The Second Circuit has applied *Burke* in *Weinreb v. Hospital for Joint Diseases Orthopaedic Institute*, 404 F.3d 167, 171 (2d Cir. 2005); *Frommert v. Conkright*, 433 F.3d 254, 267 (2d Cir. 2006); *Wilkins v. Mason Tenders Dist. Council Pension Fund*, 445 F.3d 572, 585 (2d Cir. 2006); *Tocker v. Philip Morris*, 470 F.3d 481, 489 (2d Cir. 2006); and *Schad v. Stamford Health Sys.*, 2009 WL 4981271, *2, 2009 U.S. App. LEXIS 27939, *6 (2d Cir. Dec. 21, 2009). In *Weinreb*, *Tocker*, and *Schad*, the defendants rebutted "likely prejudice" with the "harmless error" defense. *Wilkins* was remanded for "a showing of likely prejudice."

question had been preserved below–would have no effect on the outcome of this case.

The First, Fourth, Seventh, Eighth and Tenth Circuits require "some significant reliance upon, or possible prejudice flowing from, the faulty plan description." *Govoni v. Bricklayers, Masons & Plasterers Local 5 Pension Fund*, 732 F.2d 250, 252 (1st Cir. 1984) (Breyer, J.); *Aiken v. Policy Mgmt. Systems Corp.*, 13 F.3d 138, 141 (4th Cir. 1993); *Hightshue v. AIG Life Ins. Co.*, 135 F.3d 1144, 1149 (7th Cir. 1998); *Marolt v. Alliant Techsystems, Inc.*, 146 F.3d 617, 621 (8th Cir. 1998);[5] *Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1519 (10th Cir. 1996).

Although the *Govoni* standard has been applied "with varying degrees of stringency" in these circuits, *Burke*, 336 F.3d at 113, the "possible prejudice" standard is clearly compatible with the Second Circuit's "likely prejudice/harmless error" standard, and on its face broader.[6] It is also clear that the

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[5] In *Greeley v. Fairview Health Services*, 479 F.3d 612 (8th Cir. 2007), the Eighth Circuit disagreed with the Second Circuit's "likely prejudice" standard. However, *Greeley* simultaneously affirmed the *Govoni* standard of "some significant reliance on, or possible prejudice flowing from the summary." 479 F.3d at 614 (emph. added).

[6] The terms "possible prejudice," "likely prejudice" and "harmless error" are commonly used in different areas of law, including determining the consequences of rulings and events in the progress of a trial. A Lexis search shows fifty-five decisions in which this Court has used the term "possible prejudice." No clear distinction is drawn between "possible" and "likely" prejudice, other than that the word "possible" is broader than "likely." Both

alternative of "possible prejudice, flowing from the faulty plan description" is not duplicative of "some significant reliance upon" it. For instance, in *Marolt*, the Eighth Circuit ruled that the "accessible provisions govern" when a "plan document required by law to be plainspoken for the benefit of "average plan participant[s]'...says one thing, and an obscure passage in a transactional document only lawyers will read and understand says something else." 146 F.3d at 621. The Eighth Circuit rejected Alliant's contention that the plaintiff had to prove detrimental reliance: "Alliant contends Marolt must prove she relied on the SPD to her detriment. We disagree." *Id.*; *accord Spitz v. Tepfer*, 171 F.3d 443, 448 (7th Cir. 1999) ("Whether or not Tepfer relied on that SPD language is beside the point, under decisions that have held that SPD language trumps contrary plan language").

The only circuit to adopt the individualized reliance standard touted by CIGNA is the Eleventh Circuit. *See Branch v. G. Bernd Co.*, 955 F.2d 1574, 1578-79 (11th Cir. 1992); *Heffner v. Blue Cross & Blue Shield of Ala., Inc.*, 443 F.3d 1330, 1340-46 (11th Cir. 2006). Even there, the precedent on which these decisions were based, *McKnight v. Southern Life & Health Ins. Co.*, 758 F.2d 1566 (11th Cir. 1985), suggests a different view of reliance than CIGNA proposes. In *McKnight*, the Eleventh Circuit did not require Mr. McKnight to prove that he took or did not take any specific action, such as giving up his job or making a significant expenditure, based on the

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terms are distinguished from "actual prejudice."

language in the SPD. The Eleventh Circuit simply held that he "was justified in relying on the summary booklet *to determine his pension rights*." 758 F.2d at 1571 (emph. added).

CIGNA's petition thus vastly overstates the depth and legal significance of whatever disagreements exist among the circuits about the reliance or prejudice that plaintiffs need to show to obtain redress for a misleading SPD or SMM. To the extent that there is a division among the circuits, the outlier is the Eleventh Circuit, not the Second Circuit. Here, the District Court's findings that CIGNA's descriptions of the changes were "downright misleading" combined with the admission of CIGNA's counsel that they were "totally inadequate" are sufficiently strong that whatever disagreement there is among the other circuits about the precise wording of the standard, the *Amara* plaintiffs would satisfy it. In this circumstance, the Court should not reach out to decide an issue that was not briefed, argued, or passed upon below.

II. CIGNA also contends that this Court should review the Second Circuit's application of *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995). Pet. at 23. CIGNA argues that the Second Circuit misapplied *Schoonejongen* when it affirmed a district court ruling that an SPD controls where the terms of a plan and the SPD conflict. *See* Pet. at 23. The Second Circuit first concluded that the "SPD controls" in the event of a conflict with a less favorable plan provision twenty years ago in *Heidgerd v. Olin Corp.*, 906 F.2d 903, 908 (2d Cir. 1990), and has affirmed that position

in seven other decisions.[7] Every circuit that has addressed the issue of SPDs that conflict with plan terms has reached the same conclusion.[8] In *Kennedy v. Plan Administrator for DuPont Sav. & Inv. Plan*, 129 S.Ct. 865, 877 (2009), this Court recently found it to be "uncontested that the SIP [Savings & Investment Plan] and the summary plan description are "documents and instruments governing the plan" and that "[t]hose documents provide that the plan administrator will pay benefits ... in a particular way. William's designation of Liv as his beneficiary was made in the way required; Liv's waiver was not."

To justify certiorari based on an appellate decision's conflict with Supreme Court precedent, the conflict must be "direct." *Lambert v. Wicklund*, 520

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[7] *American Federation of Grain Millers v. Int'l Multifoods Corp.*, 116 F.3d 976, 983 (1997); *Joyce v. Curtiss-Wright Corp.*, 171 F.3d 130, 135-36 (1999); *Layaou v. Xerox Corp.*, 238 F.3d 205, 211 (2001) (Sotomayor, J.); *Burke, supra*, 336 F.3d at 110; *Frommert, supra*, 433 F.3d at 265; *Bouboulis v. Transport. Workers*, 442 F.3d 55, 61 (2006); *Tocker, supra*, 470 F.3d at 487-88.

[8] *Bard v. Boston Shipping Ass'n*, 471 F.3d 229, 245 (1st Cir. 2006); *Burstein, supra*, 334 F.3d at 378 and 381 (3d Cir. 2003); *Blackshear v. Reliance Std. Life Ins. Co.*, 509 F.3d 634, 644 (4th Cir. 2007); *Washington v. Murphy Oil USA, Inc., supra*, 497 F.3d at 457 (5th Cir. 2007); *Helwig v. Kelsey-Hayes Co.*, 93 F.3d 243, 249 (6th Cir. 1996), *cert. denied*, 519 U.S. 1059 (1997); *Spitz v. Tepfer*, supra, 171 F.3d at 448 (7th Cir. 1999); *Halbach v. Great-West Life and Annuity Ins. Co.*, 561 F.3d 872, 877 (8th Cir. 2009); *Bergt v. Ret. Plan. for Pilots Employed by MarkAir, Inc.*, 293 F.3d 1139, 1143-45 (9th Cir. 2002); *Chiles v. Ceridian Corp., supra*, 95 F.3d at 1515 (10th Cir. 1996); *McKnight v. Southern Life & Health Ins. Co., supra*, 758 F.2d at 1570 (11th Cir. 1985).

U.S. 292, 203 (1997). Here, CIGNA's argument that the precedents of eleven circuits are in "direct" conflict with *Schoonejongen* is based on a "loose reading" of that standard.[9] The question in *Schoonejongen* was whether the requirements in ERISA §402(b)(3), 29 U.S.C. §1102(b)(3), that every employee benefit plan have a "procedure for amending [the] plan" and a procedure "for identifying the persons who have authority to amend the plan"were satisfied. 514 U.S. at 78-79. *Schoonejongen* did not question the position that the "SPD controls" in the event of a conflict between an inadequate SPD and the Plan document. Indeed, *Schoonejongen* distinguished ERISA §402(b)(3) from ERISA's "reporting and disclosure" requirements, concluding that ERISA §402(b)(3) is "not part" of those rules, which require that "both" SPDs and "plan amendment summaries 'shall be written in a manner calculated to be understood by the average plan participant.'" *Id.* at 83-84.

III. Lastly, CIGNA contends that "at a minimum" this Court should hold its petition and GVR the case based on the resolution of *Conkright v. Frommert* (08-810). Pet. at 24-26. CIGNA contends that the district court should have "afford[ed] deference to the remedy that CIGNA proposed for the alleged [sic] deficiencies

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[9] "Lawyers ... are likely to regard any case they have lost in a lower court as necessarily in conflict with some Supreme Court decision or doctrine.... But such a loose reading ... does not satisfy the Court's own understanding of what constitutes a conflict of this nature. To justify a grant of certiorari, the conflict must truly be direct...." Eugene Gressman, *et al.*, *Supreme Court Practice*, 9th ed., at Ch. 4.5.

in its SPDs." *Id.* at 25. This argument is again one that CIGNA failed to make or preserve below. The District Court's decision on relief addressed the proposal to which CIGNA refers and explained why it is insufficient. Pet. App. at 197a-198a. On appeal, CIGNA never mentioned that proposal again, much less contended that the District Court failed to give it "the deference properly afforded" to its positions. Pet. at 25.

Conclusion

For the foregoing reasons, CIGNA's petition for a writ of certiorari should be denied.

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REPLY BRIEF

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No. 09-804

IN THE
Supreme Court of the United States

CIGNA CORPORATION AND CIGNA PENSION PLAN,
Petitioners,

v.

JANICE C. AMARA ET AL., individually and on behalf of all others similarly situated,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

REPLY BRIEF FOR PETITIONERS

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RULE 29.6 STATEMENT

The corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

TABLE OF CONTENTS

Page

RULE 29.6 STATEMENT i

TABLE OF AUTHORITIES iii

REPLY BRIEF FOR PETITIONERS 1

I. CIGNA PRESERVED THE QUESTION PRESENTED BELOW 2

II. THE CIRCUITS HAVE REACHED IRRECONCILABLE CONCLUSIONS ABOUT THE SHOWING THAT MUST BE MADE TO RECOVER BASED ON A DEFICIENT SPD 5

III. IN THE ALTERNATIVE, A GVR IN LIGHT OF *CONKRIGHT V. FROMMERT* IS WARRANTED 9

CONCLUSION 9

TABLE OF AUTHORITIES

Page(s)

CASES

Alexander v. Sandoval,
532 U.S. 275 (2001) 8

Burke v. Kodak Retirement Income Plan,
336 F.3d 103 (2d Cir. 2003),
cert. denied, 540 U.S. 1105 (2004) 2, 4, 5, 7

Chiles v. Ceridian Corp.,
95 F.3d 1505 (10th Cir. 1996) 8

Curtiss-Wright Corp. v. Schoonejongen,
514 U.S. 73 (1995) 3, 8

Fenton v. John Hancock Mut. Life Ins. Co., 400 F.3d 83 (1st Cir. 2005) 6

Greeley v. Fairview Health Servs.,
479 F.3d 612 (8th Cir. 2007) 1, 5, 7

Heffner v. Blue Cross & Blue Shield of Ala., Inc., 443 F.3d 1330
(11th Cir. 2006) 5, 8

Jones v. United States,
526 U.S. 227 (1999) 8

MedImmune, Inc. v. Genentech, Inc.,
549 U.S. 118 (2007) 4

Morales-Alejandro v. Med. Card Sys., Inc.,
486 F.3d 693 (1st Cir. 2007) 5

Schwartz v. Prudential Ins. Co. of Am.,
450 F.3d 697 (7th Cir. 2006) 5

Washington v. Murphy Oil USA Inc.,
497 F.3d 453 (5th Cir. 2007) 1, 5, 6

Weinreb v. Hosp. for Joint Diseases Orthopaedic Inst., 404 F.3d 167 (2d Cir. 2005) 6

Wilson v. Metropolitan Life Ins. Co., 183 F. App'x 286 (4th Cir. 2006) 5

OTHER AUTHORITIES

Jayne E. Zanglein & Susan J. Stabile, ERISA LITIGATION (3d ed. 2008) 6

REPLY BRIEF FOR PETITIONERS

Confronted with a direct and acknowledged circuit split, respondents concede, as they must, that the circuits are divided as to the showing that a participant in an ERISA-governed plan must make to recover benefits based on an inconsistency between the Summary Plan Description ("SPD") and the plan itself. *See* Opp. at 9 (acknowledging that the Second Circuit's "likely harm" standard is incompatible with the "individualized reliance standard" applied by other circuits). And while respondents attempt to minimize the depth of that split—and to suggest that the circuits' inconsistent positions have begun to converge—recent decisions demonstrate that, in fact, the split continues to deepen.

Indeed, less than three years ago, the Fifth Circuit identified "a *five*-way circuit split regarding whether an ERISA claimant needs to establish reliance and/or prejudice based on the conflicting terms of an SPD." *Washington v. Murphy Oil USA Inc.*, 497 F.3d 453, 458 n.1 (5th Cir. 2007) (emphasis added). That same year, the Eighth Circuit explicitly rejected the Second Circuit's "likely harm" standard, which the district court applied here to permit recovery without a showing that *any* member of the plaintiff class had relied upon or been prejudiced by CIGNA's allegedly deficient SPDs. *See Greeley v. Fairview Health Servs.*, 479 F.3d 612, 614 (8th Cir. 2007). In direct conflict with the decision below, the Eighth Circuit held that, "[i]n order for an employee to recover from his employer for a faulty SPD," the employee must "show he relied on its terms to his detriment." *Id.*

Such widespread disagreement about a question of vital importance to both plan sponsors and participants creates intolerable legal uncertainty that impairs the efficient administration of ERISA plans and undermines the uniformity that is the hallmark of ERISA's regulatory framework. This Court should grant review to ensure, as Congress intended, that there is a single, nationally uniform standard governing the SPD-based rights and obligations of ERISA plan sponsors and participants.

I. CIGNA PRESERVED THE QUESTION PRESENTED BELOW.

Respondents argue that review is not warranted because CIGNA purportedly failed to challenge the Second Circuit's "likely harm" standard below. Opp. at 3. Respondents' attempt to erect a procedural barrier to review is unavailing.

CIGNA argued consistently and repeatedly throughout the course of the proceedings below that a showing of "likely harm" is insufficient to permit recovery based on a deficient SPD and that each class member was instead required to make an individualized showing of reliance or prejudice to recover. During the liability phase of the district court proceedings, for example, CIGNA argued that, even if its SPDs were deficient, respondents were "not entitled to relief because they ha[d] failed to demonstrate injury" attributable to those deficiencies. Pet. App. 131a. In reliance on the Second Circuit's decision in *Burke v. Kodak Retirement Income Plan*, 336 F.3d 103 (2d Cir. 2003), *cert. denied*, 540 U.S. 1105 (2004), the district court explicitly rejected that argument and held that recovery is appropriate where "a plan participant or beneficiary was *likely* to have been harmed as a result of a deficient SPD." Pet. App. 132a (internal quotation marks omitted).

In the remedial phase of the district court case, CIGNA similarly argued that a remedy could only be implemented if "an[ ] individual employee suffered likely prejudice" as a result of the allegedly deficient SPDs. Pet. App. 162a; *see also* CIGNA's Memo. on Individual Issues and Class Relief 2 n.1 ("At a minimum, a plan participant should be required to prove detrimental reliance before being entitled to benefits based on a flawed SPD. The First, Fourth, Seventh, Eighth, Tenth, and Eleventh Circuits all have imposed a requirement that participants prove detrimental reliance or prejudice to state a claim based on a deficient SPD."). The district court rejected CIGNA's individualized remedial approach and refused to "require an individualized showing such as that requested by CIGNA, *even from the named Plaintiffs themselves*." Pet. App. 164a (emphasis added).

CIGNA continued to press this argument on appeal. As in the district court, CIGNA argued that "a participant is not entitled to a remedy upon a finding that he/she was not *actually harmed* by a deficient disclosure" and asserted that the district court erred when it awarded classwide relief "without considering each class member's own actual knowledge and factual circumstances." CIGNA's C.A. Opening Br. 33, 34 (emphasis added). CIGNA also explicitly drew the Second Circuit's attention to the fact that "some [circuits] require a showing of prejudice or detrimental reliance and others do not" and urged that the "issue [was] appropriate for consideration by the panel, or alternatively, for consideration by the Second Circuit en banc." *Id.* at 45 n.11. CIGNA further highlighted the conflict between *Burke*'s "likely harm" standard and this Court's precedent. *See id.* at 45 ("the holding in *Burke* is inconsistent with . . . the Supreme Court's decision in *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995)"). Indeed, re-

spondents' own briefing acknowledged that CIGNA was challenging the validity of the standard adopted by the Second Circuit in *Burke*. *See* Pls.' C.A. Response & Reply Br. 24 (CIGNA "argues that *Burke v. Kodak*, 336 F.3d 103 (2d Cir. 2003), should be overturned").

Respondents also fault CIGNA for "contend[ing]" below "that it should prevail under th[e] standard" articulated in *Burke* and for deciding not to seek rehearing en banc. Opp. at 3. But, it is wholly unremarkable—and certainly no barrier to this Court's review—that, in the face of binding circuit precedent adopting a "likely harm" standard, CIGNA argued both that the standard was erroneous and that, if the Second Circuit persisted in its application of such a standard, that CIGNA should nevertheless prevail. There is no requirement that a party confronted with adverse circuit precedent concede the futility of its case in the lower courts in order to preserve its right to review in this Court. Nor is there a requirement that a party undertake the time-consuming and almost invariably fruitless step of petitioning for en banc review of that circuit precedent before petitioning for review in this Court. *See, e.g.*, *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 125 (2007) (deciding an issue that the petitioner had lost in the lower court based on binding circuit precedent and that it had not sought to have reheard en banc). This is especially true where the decision below was a summary affirmance that is exceptionally unlikely to garner the attention of the en banc court.

The question on which CIGNA seeks this Court's review is thus squarely presented in this case—which affords the Court an ideal opportunity to resolve an important issue of ERISA interpretation that has hopelessly divided the lower courts.

II. THE CIRCUITS HAVE REACHED IRRECONCILABLE CONCLUSIONS ABOUT THE SHOWING THAT MUST BE MADE TO RECOVER BASED ON A DEFICIENT SPD.

Respondents also attempt to evade this Court's review by arguing that the acknowledged split in the circuits regarding the standard for SPD-based recoveries has narrowed in recent years. In fact, the opposite is true.

Since the Second Circuit decided *Burke* in 2003—and, in so doing, recognized that the "circuits are divided" as to the showing that must be made to recover based on a deficient SPD (336 F.3d at 112)—the circuit split implicated in this case has not only persisted but deepened. Numerous cases have reaffirmed the position of the First, Fourth, Seventh, Eighth, Tenth, and Eleventh Circuits that, "to secure relief on the basis of a faulty summary plan description, the claimant must show some significant reliance on, or possible prejudice flowing from the summary." *Greeley*, 479 F.3d at 614 (internal quotation marks omitted); *see also, e.g.*, *Morales-Alejandro v. Med. Card Sys., Inc.*, 486 F.3d 693, 699 (1st Cir. 2007); *Wilson v. Metropolitan Life Ins. Co.*, 183 F. App'x 286, 291 (4th Cir. 2006); *Schwartz v. Prudential Ins. Co. of Am.*, 450 F.3d 697, 699 (7th Cir. 2006); *Heffner v. Blue Cross & Blue Shield of Ala., Inc.*, 443 F.3d 1330, 1340 (11th Cir. 2006). Moreover, the contrary position that no showing of reliance or prejudice is required to recover based on a deficient SPD—followed only in the Third and Sixth Circuits at the time *Burke* was decided—has secured a third adherent, the Fifth Circuit, in recent years. *See Washington*, 497 F.3d at 458-59. In the face of these two divergent interpretations of ERISA, the Second Circuit has repeatedly reaffirmed its own unique position

that a plan participant need only show "likely harm"—rather than actual reliance or prejudice—to recover. *See, e.g.*, *Weinreb v. Hosp. for Joint Diseases Orthopaedic Inst.*, 404 F.3d 167, 171 (2d Cir. 2005).

It should thus come as no surprise that, in the wake of *Burke*, courts have continued to acknowledge the existence of this division in lower-court authority. *See, e.g.*, *Fenton v. John Hancock Mut. Life Ins. Co.*, 400 F.3d 83, 88 (1st Cir. 2005) ("Not all circuits have this [reliance] requirement"); *Washington*, 497 F.3d at 458 n.1.[1] And, the recent expansion of this split has exacerbated the already substantial legal uncertainty that confronts plan administrators seeking to draft SPDs and make benefit determinations, as well as ERISA litigants seeking to pursue and defend benefits claims in court. The reasons for this Court to grant review and provide an authoritative response to this sharply disputed question have therefore grown even more compelling in recent years.

Respondents do not seriously contest the existence of this extensive circuit split—nor could they plausibly do so. They instead contend that the split is not as widespread as this three-way division in authority would suggest because the Second Circuit's "likely harm" standard is purportedly "compatible" with the showing of reliance or prejudice required in the First, Fourth, Seventh, Eighth, Tenth, and Elev-

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[1] *See also* Jayne E. Zanglein & Susan J. Stabile, ERISA LITIGATION 755 (3d ed. 2008) ("Some courts do not require proof of reliance on the favorable SPD statement, thereby potentially converting the SPD statement into a 'plan term' enforceable as a claim for benefits under Section 502(a)(1)(b); however, other courts do require proof that the inaccurate SPD statement caused reliance and harm.") (citations omitted).

enth Circuits. Opp. at 8. But, in *Burke*, the Second Circuit itself explicitly considered—and *rejected*—the reliance-or-prejudice standard because, in its view, "requiring plan participants or beneficiaries to show detrimental reliance to recover for a deficient SPD contravenes ERISA's objective to promote distribution of accurate SPDs to employees." 336 F.3d at 106. For that reason, the Second Circuit required only the minimal showing that a plan participant was "*likely* to have been harmed as a result of a deficient SPD" (*id.* at 113)—a standard that is much closer to the strict-liability approach of the Third, Fifth, and Sixth Circuits than to the showing of reliance or prejudice required by the majority of circuits that have addressed the issue. *See also Greeley*, 479 F.3d at 614 (rejecting the "likely prejudice" standard in favor of a showing of reliance or prejudice). The district court reiterated the point in this case when it rejected CIGNA's argument that, "'a plan participant should be required to prove detrimental reliance before being entitled to benefits based on a flawed SPD'" because that "position" was "contrary to Second Circuit precedent." Pet. App. 165a n.1 (citing *Burke*, 336 F.3d at 112).

Respondents are therefore wrong when they contend that, whatever the remedial standard applied in this case, they "would satisfy it." Opp. at 10. There is a vast practical difference between the Second Circuit's "likely harm" standard and the reliance-or-prejudice standard applied in six other circuits. Indeed, the district court made clear that a plaintiff need not have even read a deficient SPD to satisfy the "likely harm" standard and refused to require an "individualized showing" of harm from any member of the plaintiff class. Pet. App. 164a; *see also id.* at 167a (rejecting CIGNA's argument "that employees

who received but did not read the misleading notices and disclosures should be considered not to have demonstrated likely harm"). In contrast, courts that apply the reliance-or-prejudice standard require each individual plaintiff seeking relief to prove harm from the deficient SPD. *See Heffner*, 443 F.3d at 1344 ("in order to be entitled to relief each class member must prove that he relied on the . . . plan's SPD"); *Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1519 (10th Cir. 1996) (requiring "each individual" in a class action to demonstrate reliance on or prejudice flowing from a deficient SPD). Respondents did not even attempt to make such an individualized showing in this case and instead rested their case exclusively upon the Second Circuit's "likely harm" approach. That manifestly flawed standard—which facilitates the recovery of windfall benefits by participants who may not have even read a deficient SPD—should be conclusively rejected by this Court.[2]

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[2] The Second Circuit's "likely harm" standard is also inconsistent with this Court's decision in *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995), which makes clear that an SPD can only modify the terms of a plan where its publication satisfies the plan's formal amendment procedures. *Id.* at 83-85. The publication of CIGNA's SPDs did not satisfy the Plan's amendment procedures and thus, under *Curtiss-Wright*, could not have modified the terms of the Plan. Neither the Second Circuit—nor any other circuit that has awarded benefits based on a deficient SPD—has made a meaningful attempt to reconcile its decision to award additional benefits with the holding of *Curtiss-Wright*. Moreover, this Court has not hesitated to grant certiorari to reject an erroneous position unanimously adopted by the circuits. *See, e.g., Alexander v. Sandoval*, 532 U.S. 275 (2001); *Jones v. United States*, 526 U.S. 227 (1999).

III. In The Alternative, A GVR In Light Of *Conkright v. Frommert* Is Warranted.

In the event the Court does not grant plenary review, it should GVR this case in light of *Frommert*. Respondents do not contest the relevance of *Frommert* to the question whether the district court failed to afford proper weight to the views of CIGNA as "de facto" plan administrator when crafting the so-called "A+B" remedy. Respondents instead contend that CIGNA failed to preserve this issue on appeal. But, in the Second Circuit, CIGNA vigorously challenged the district court's award of additional benefits to respondents. CIGNA's C.A. Opening Br. 21-48. And, it did so on the ground that, in granting "A+B" benefits to respondents, the district court improperly "awarded . . . more benefits than they were told they could get under the Plan." *Id.* at 22 (emphasis omitted).

The Second Circuit nevertheless summarily affirmed the district court's remedy. Pet. App. 4a. If this Court holds in *Frommert* that district courts are required to afford deference to a plan administrator's interpretation of a plan rendered outside the benefit-determination setting, the lower courts should be required to reconsider the validity of awarding additional benefits in light of CIGNA's interpretation of the benefits provided by the Plan.

CONCLUSION

The petition for a writ of certiorari should be granted.

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AMICUS CURIAE BRIEF

Nos. 09-784 and 09-804

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In the Supreme Court of the United States

JANICE C. AMARA, ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PETITIONERS

v.

CIGNA CORPORATION, ET AL.

CIGNA CORPORATION, ET AL., PETITIONERS

v.

JANICE C. AMARA, ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether participants in an employee benefit plan covered by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, who make an unrebutted showing of likely harm from material misrepresentations in a summary plan description (SPD) may recover benefits based on the inconsistency between the SPD and the plan terms as described in other plan documents.

2. Whether the district court abused its discretion in basing the amount of the participants' recovery on the SPD misrepresentations rather than awarding larger amounts based on additional misrepresentations in a notice required by Section 204(h) of ERISA, 29 U.S.C. 1054(h) (2000), or a summary of material modifications.

TABLE OF CONTENTS

Page

Interest of the United States 1
Statement 2
Discussion 10
A. The issues in No. 09-804 do not warrant this Court's review 11
B. The issues in No. 09-784 do not warrant this Court's review 19
C. The Court need not grant, vacate, and remand in light of *Conkright* 22
Conclusion 23

TABLE OF AUTHORITIES

Cases:

Aiken v. *Policy Mgmt. Sys. Corp.*, 13 F.3d 138 (4th Cir. 1993) 17
Alday v. *Container Corp. of Am.*, 906 F.2d 660 (11th Cir. 1990), cert. denied, 498 U.S. 1026 (1991) ... 11
Bergt v. *Retirement Plan for Pilots Employed by MarkAir, Inc.*, 293 F.3d 1139 (9th Cir. 2002) 11
Branch v. *G. Bernd Co.*, 955 F.2d 1574 (11th Cir. 1992) 15
Burke v. *Kodak Ret. Income Plan*, 336 F.3d 103 (2d Cir. 2003), cert. denied, 540 U.S. 1105 (2004) 8, 12, 13, 14
Burstein v. *Retirement Account Plan*, 334 F.3d 365 (3d Cir. 2003) 11, 12, 17
Chiles v. *Ceridian Corp.*, 95 F.3d 1505 (10th Cir. 1996) 11, 17
Conkright v. *Frommert*, 130 S. Ct. 1640 (2010) 15, 22

Cases—Continued: Page

Curtiss-Wright Corp. v. *Schoonejongen*, 514 U.S. 73 (1995) 11, 12, 16
Edwards v. *State Farm Mut. Auto. Ins. Co.*, 851 F.2d 134 (6th Cir. 1988) 17
Govoni v. *Bricklayers, Masons & Plasterers Int'l Union of Am.*, 732 F.2d 250 (1st Cir. 1984) 17
Harris v. *Blue Cross Blue Shield*, 995 F.2d 877 (8th Cir. 1993) 17
Heffner v. *Blue Cross & Blue Shield*, 443 F.3d 1330 (11th Cir. 2006) 15
Hightshue v. *AIG Life Ins. Co.*, 135 F.3d 1144 (7th Cir. 1998) 17
Jensen v. *SIPCO, Inc.*, 38 F.3d 945 (8th Cir. 1994), cert. denied, 514 U.S. 1050 (1995) 11
Kennedy v. *Plan Admin. for DuPont Sav. & Inv. Plan*, 129 S. Ct. 865 (2009) 11
National Ass'n of Home Builders v. *Defenders of Wildlife*, 551 U.S. 644 (2007) 12
Pierce v. *Security Trust Life Ins. Co.*, 979 F.2d 23 (4th Cir. 1992) 13
Schad v. *Stamford Health Sys., Inc.*, No. 08-5962-cv, 2009 WL 4981271 (2d Cir. Dec. 21, 2009) 13
Washington v. *Murphy Oil USA, Inc.*, 497 F.3d 453 (5th Cir. 2007) 17

Statutes and regulations:

Economic Growth and Tax Relief Reconciliation Act, Pub. L. No. 107-16, § 659, 115 Stat. 137-141 2

Statutes and regulations—Continued: Page

Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* 2
29 U.S.C. 1001 12
29 U.S.C. 1001(a) 11
29 U.S.C. 1001(b) 11
29 U.S.C. 1001a 12
29 U.S.C. 1022 11
29 U.S.C. 1022(a) 2, 3, 11
29 U.S.C. 1022(b) 3
29 U.S.C. 1024(b) 3
29 U.S.C. 1024(b)(2) 11
29 U.S.C. 1024(b)(4) 11
29 U.S.C. 1054(h) (Section 204(h)) ..... *passim*
29 U.S.C. 1054(g) 4
29 U.S.C. 1054(h)(1) (2000) 2
29 U.S.C. 1054(h)(2) 2
29 U.S.C. 1054(h)(3) 2
29 U.S.C. 1054(h)(6) 2, 18, 21
29 U.S.C. 1102(b)(3) 16
29 U.S.C. 1104(a)(1)(D) 12, 16
Pension Protection Act of 2006, Pub. L. No. 109-280, § 701(a), 120 Stat. 981 4
29 U.S.C. 1054(b)(5)(B)(iii) 4, 18, 20
26 C.F.R.:
Section 1.411(d)-6 Q&A-10 (1999) 2
Section 1.411(d)-6T, Q&A-10 (1997) 2
29 C.F.R. 2520.102-2(b) 3

Miscellaneous: Page

Peter J. Wiedenbeck, *ERISA in the Courts* (2008) 11

In the Supreme Court of the United States

No. 09-784

JANICE C. AMARA, ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PETITIONERS

v.

CIGNA CORPORATION, ET AL.

No. 09-804

CIGNA CORPORATION, ET AL., PETITIONERS

v.

JANICE C. AMARA, ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

This brief is submitted in response to the order of this Court inviting the Solicitor General to express the views of the United States. In the view of the United States, the petitions for a writ of certiorari should be denied.

STATEMENT

1. Under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, a defined benefit pension plan generally may not be amended to reduce significantly the rate of future benefit accrual unless the plan administrator provides the notice to participants required by Section 204(h) of ERISA, 29 U.S.C. 1054(h). Until 2001, that notice had to "set[] forth the plan amendment and its effective date," 29 U.S.C. 1054(h)(1) (2000), which meant that the notice had to include either the amendment's text or an understandable summary. 26 C.F.R. 1.411(d)-6, Q&A-10 (1999); 26 C.F.R. 1.411(d)-6T, Q&A-10 (1997). The pre-2001 version of Section 204(h) did not address the remedy for a violation of the notice requirement. Under amendments to Section 204(h) enacted in 2001, Economic Growth and Tax Relief Reconciliation Act, Pub. L. No. 107-16, § 659, 115 Stat. 137-141, the notice must now provide sufficient information, as determined by the Secretary of Treasury, to allow individuals to understand the effect of the plan amendment. 29 U.S.C. 1054(h)(2) and (3). Section 204(h) also now specifies that, in the case of an "egregious failure" to satisfy its requirements, the plan shall be applied as if it entitled affected individuals to the greater of the benefits to which they would have been entitled absent the amendment or the benefits under the plan as provided by the amendment. 29 U.S.C. 1054(h)(6).

ERISA further requires the administrator of an employee benefit plan to give participants a summary plan description (SPD) and a summary of any material modifications (SMM) that are "sufficiently accurate and comprehensive to reasonably apprise [them] * * * of their rights and obligations under the plan." 29 U.S.C.

1022(a). The SPD must provide notice of, among other things, "circumstances which may result in disqualification, ineligibility, or denial or loss of benefits," 29 U.S.C. 1022(b), and the SMM must provide notice of changes in those circumstances, 29 U.S.C. 1022(a). The SPD and SMM must "be written in a manner calculated to be understood by the average plan participant," 29 U.S.C. 1022(a), and "must not have the effect [of] misleading, misinforming or failing to inform participants." 29 C.F.R. 2520.102-2(b). See 29 U.S.C. 1024(b).

2. a. During 1997 and 1998, CIGNA Corporation converted its traditional defined benefit pension plan to a cash balance plan, an alternative form of defined benefit pension plan. Pet. App. 16a-17a.[1] In a traditional defined benefit plan, each employee's benefit is generally defined as an annuity beginning at normal retirement age and calculated based on the employee's compensation and years of service. *Id.* at 9a. In a cash balance plan, each employee's benefit is generally defined by reference to the amount in a hypothetical account. The balance in that account typically increases over time with hypothetical contributions—pay credits, which are based on a percentage of the employee's compensation, and interest credits, which are based on application of a specified interest rate to the hypothetical account balance. *Id.* at 12a.

In converting to the cash balance plan, CIGNA used a transition method called the "greater of A or B." Under that approach, CIGNA first amended the plan to freeze the benefits that employees had accrued under the traditional defined benefit formula (Part A) and then

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[1] Unless otherwise noted, "Pet." and "Pet. App." refer to the petition and appendix in No. 09-804.

amended the plan to provide that, going forward, employees would receive the greater of those frozen benefits (which ERISA prohibited CIGNA from reducing, 29 U.S.C. 1054(g)) or the benefits due under a new cash balance formula (Part B). Pet. App. 13a-14a, 16a-22a. An alternative transition method, called "A plus B," would have been more favorable to employees. Under that approach, after the conversion, CIGNA would have paid employees both their frozen accrued benefits under the traditional formula (Part A) and additional benefits under the new cash balance formula (Part B). *Id.* at 13a. Although ERISA permitted the "greater of A or B" approach at the time of CIGNA's conversion, ERISA no longer permits that approach. For any conversion after June 29, 2005, participants' post-conversion benefits cannot be less than those provided by the "A plus B" approach. Pension Protection Act of 2006 (PPA), Pub. L. No. 109-280, § 701(a), 120 Stat. 981, 29 U.S.C. 1054(b)(5)(B)(iii).

b. CIGNA implemented the "greater of A or B" approach by creating an opening balance for each participant under Part B based on the participant's accrued benefit under Part A. Pet. App. 19a. Because of CIGNA's choice of discount rates and mortality risk adjustments, however, as well as its decision not to include the value of certain benefits, a participant's Part B opening account balance was frequently much less than the present value of the participant's Part A accrued benefit at the time of the conversion. *Id.* at 23a, 121a-123a.

As a result of CIGNA's plan design decisions, as well as declining interest rates in the years following the conversion, many employees experienced an extended period during which their Part B benefit was less than the then-present value of their frozen Part A accrued bene-

fit. Pet. App. 23a-25a. During this period, affected employees continued to work, and their hypothetical cash balance accounts continued to grow, but, until the cash balance accounts caught up with the previously accrued benefits under Part A, they earned no additional retirement benefits beyond what they had already earned. *Id.* at 25a. Some employees experienced several years of working without accruing additional benefits, and, in some cases, employees were never able to "wear away" the difference between their frozen Part A benefits and their benefits under Part B. *Id.* at 25a-26a.

CIGNA was aware that the amended plan could result in "wear away" periods during which employees would work without actually accruing additional benefits, but CIGNA did not inform employees about that possibility. Pet. App. 29a, 118a-119a. Instead, CIGNA provided materially misleading statements suggesting that employees would continue to accrue additional benefits as they worked, with no "wear away" periods. *Id.* at 126a-127a. In a November 1997 newsletter, which CIGNA later identified as the notice required by ERISA Section 204(h), *id.* at 95a, CIGNA stated that the conversion would "significantly enhance its retirement program." *Id.* at 31a. The newsletter said that "the new plan is designed to work well for *both* longer- and shorter-service employees" and provides "benefit growth throughout [an employee's] career." *Ibid.* (brackets in original).

In December 1997, CIGNA sent each participant a retirement kit, which CIGNA later identified as the required SMM. Pet. App. 33a, 95a. Like the newsletter, the retirement kit described the changes to CIGNA's retirement program as enhancements. *Id.* at 34a. Although the kit provided details about the calculation of

opening balances under Part B, it did not describe all of the discounts applied in calculating those balances. *Id.* at 35a. In addition, it stated that "[e]ach dollar's worth of credits is a dollar of retirement benefits payable to [participants] after [they] are vested," *id.* at 36a; that the new plan generally provides "larger benefits for shorter-service employees and comparable benefits for longer-service employees," *id.* at 37a; and that participants "will see the growth in [their] total retirement benefits from CIGNA every year." *Ibid.*

In October 1998 and September 1999, CIGNA issued SPDs for the cash balance plan. Pet. App. 39a. The SPDs stated that "[e]ach dollar's worth of credit is a dollar of retirement benefits payable to [participants] after [they] are vested," and reported that amounts in a participant's account "continue to grow every year [the participant is] with CIGNA." *Id.* at 39a-40a, 126a.

CIGNA was aware that employees lacked full information about the true effects of the conversion to the cash balance plan, including "wear away" and a lower accrual rate for many participants, but chose not to inform employees about those effects in order to ease the transition to the amended plan. Pet. App. 110a-113a. CIGNA wanted to avoid possible employee protests, which CIGNA was aware had caused some other employers to abandon or scale back similar conversions to cash balance plans. *Id.* at 113a-114a.

3. a. In 2001, Janice C. Amara and other plan participants brought a class action lawsuit against CIGNA and its pension plan (together CIGNA) in the United States District Court for the District of Connecticut. Pet. App. 41a. As relevant here, the plaintiffs alleged that, in converting to the cash balance plan, CIGNA had failed to comply with the notice requirements of ERISA Section

204(h), as well as ERISA's SPD and SMM provisions. *Id.* at 94a.

b. In February 2008, after an extensive bench trial, the district court determined that CIGNA had violated Section 204(h) and the SPD and SMM requirements. Pet. App. 5a-159a.

The court declined to decide whether the version of Section 204(h) in effect at the time of the conversion required explicit notice that benefits were being reduced or that participants might experience periods of "wear away" under the amended plan. Pet. App. 103a-104a. The court concluded that, even if those affirmative disclosures were not required, CIGNA's Section 204(h) notice failed to comply with ERISA's requirements because it included "material misrepresentations suggesting benefit increases" and indicating that "reductions in the rate of future benefit accrual were not a component or a possible result" of the conversion. *Id.* at 104a-106a.

The district court determined that CIGNA's SPDs and SMM likewise failed to comply with ERISA's requirements because the documents did not disclose the possibility of "wear away" periods, even though CIGNA knew that a sizeable number of employees were likely to experience such periods because of the amended plan's design. Pet. App. 118a-126a. Moreover, even assuming that CIGNA had no affirmative duty to inform participants about "wear away," the court found that the SPDs and SMM contained "materially misleading statements" that led participants to believe that they would steadily earn additional benefits under the amended plan. *Id.* at 126a-128a. The court further found that the documents contained misrepresentations that led participants to believe that all benefits accrued under the traditional plan, including early retirement benefits, would be in-

cluded in determining opening account balances under the cash balance plan. *Id.* at 128a-131a.

The court rejected CIGNA's argument that the participants were not entitled to relief because they had failed to demonstrate injury. Pet. App. 131a-137a. The court noted that, under *Burke* v. *Kodak Retirement Income Plan*, 336 F.3d 103 (2d Cir. 2003), cert. denied, 540 U.S. 1105 (2004), a participant may recover based on a deficient SPD only if the participant establishes likely prejudice or harm. Pet. App. 131a-132a. If a participant shows likely harm, the court explained, "the employer may rebut [that showing] through evidence that the deficient SPD was in effect a harmless error." *Id.* at 132a (quoting *Burke*, 336 F.3d at 113). The court found that the participants collectively had shown likely harm and that CIGNA had failed to establish harmless error. *Id.* at 133a-137a. The court reasoned that CIGNA's successful efforts to conceal the full effects of the cash balance transition had deprived employees of the opportunity to take timely action in response, including protesting when the new plan was implemented. *Id.* at 137a; see *id.* at 112a-114a (finding that CIGNA deliberately misinformed employees about the effects of the conversion and thereby successfully avoided protests that had led other companies to roll back conversion plans).

c. In June 2008, the district court issued an opinion addressing the appropriate remedy. Pet. App. 160a-221a. The court concluded that no individual issues remained regarding whether participants were harmed by the SPD violations. *Id.* at 162a-169a. The court rejected as contrary to Second Circuit precedent CIGNA's argument that each plan participant should be required to prove detrimental reliance. *Id.* at 165a n.1. The court also declined to afford CIGNA an additional opportunity

to prove harmless error because CIGNA had failed to take advantage of its earlier opportunities to rebut the participants' showing of likely harm. *Id.* at 166a. In particular, the court noted, CIGNA had declined to engage in discovery that the court had authorized to determine whether class members had actual knowledge of the undisclosed information about the cash balance plan, and CIGNA had decided not to call any participants as witnesses at trial. *Ibid.*

As a remedy for the SPD and SMM violations, the court ordered CIGNA to provide benefits under the "A plus B" approach. Pet. App. 194a-201a. The court reasoned that using that approach would eliminate "wear away" and rectify CIGNA's misrepresentation about the opening balances under the cash balance plan. *Id.* at 195a-197a. The court declined to provide an additional remedy for the SMM's statement that benefits under the post-conversion plan would be "comparable" to prior benefits. *Id.* at 200a-201a.

As for the Section 204(h) violation, the court concluded that the appropriate remedy was to require CIGNA to issue new notices that comply with the requirements of Section 204(h) as amended in 2001. Pet. App. 184a-194a. The court declined to order further relief requested by the plaintiffs because that would have required invalidation of the initial amendment freezing benefits under the pre-conversion plan, which the plaintiffs had not independently challenged, *id.* at 187a-191a, and because the remedy for the SPD and SMM violations provided participants with substantial relief, *id.* at 192a.

4. In an unpublished order, the court of appeals affirmed the district court's rulings. Pet. App. 1a-4a. The

court of appeals relied on "substantially the reasons stated" by the district court. *Id.* at 4a.

DISCUSSION

This Court should deny both petitions for a writ of certiorari. The Court's review is not warranted to examine the Second Circuit's summary order, which affirmed the district court's fact-specific remedial decision. The courts of appeals uniformly agree that an SPD controls over conflicting plan terms. Although the courts disagree on the extent to which participants must show prejudice or reliance to recover benefits as described in the SPD, this case is not an appropriate vehicle to resolve that question. Other courts of appeals have addressed remedial issues concerning misleading SPDs in situations far removed from the facts here; and those courts would not necessarily have reached a different result than the court below in this factual setting, which involves class-wide harm from inaccurate disclosure of a plan amendment concerning future accrual of pension benefits. Moreover, the plan amendment in this case adopted a method of converting to a cash balance plan that is now illegal under ERISA and which is therefore not likely to recur. In addition, even if the relief awarded by the district court were not available as a remedy for CIGNA's SPD violations, that court could award similar relief for CIGNA's violation of the notice requirement in ERISA Section 204(h), which specifically governs plan amendments of the sort at issue here. And the district court's decision on the Section 204(h) remedy has little prospective significance because Congress has since amended that provision as well.

A. The Issues In No. 09-804 Do Not Warrant This Court's Review

1. Contrary to CIGNA's contention (Pet. 21-24), the courts below applied the correct standard for determining when participants may obtain benefits based on an SPD that conflicts with the plan terms as described in other documents.

The SPD is the central mechanism for achieving one of ERISA's fundamental goals—ensuring that participants accurately understand their rights and obligations under the plan. *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U.S. 73, 83 (1995); see 29 U.S.C. 1001(a) and (b), 1022. As this Court and the courts of appeals have consistently recognized, the SPD is one of the "documents and instruments governing the plan." *Kennedy* v. *Plan Admin. for DuPont Sav. & Inv. Plan*, 129 S. Ct. 865, 877 (2009); see *Bergt* v. *Retirement Plan for Pilots Employed by MarkAir, Inc.*, 293 F.3d 1139, 1143 (9th Cir. 2002); *Chiles* v. *Ceridian Corp.*, 95 F.3d 1505, 1511 (10th Cir. 1996); *Jensen* v. *SIPCO, Inc.*, 38 F.3d 945, 949 (8th Cir. 1994), cert. denied, 514 U.S. 1050 (1995); *Alday* v. *Container Corp. of Am.*, 906 F.2d 660, 665-666 (11th Cir. 1990), cert. denied, 498 U.S. 1026 (1991); 29 U.S.C. 1024(b)(2) and (4). Indeed, because the SPD is frequently the only document describing the plan's terms that participants ever receive, see Peter J. Wiedenbeck, *ERISA in the Courts* 84 (2008), ERISA "contemplates that the [SPD] will be an employee's primary source of information regarding employment benefits." *Burstein* v. *Retirement Account Plan*, 334 F.3d 365, 378 (3d Cir. 2003) (citation omitted). ERISA therefore requires the SPD to contain an "accurate and comprehensive" description of participants' "rights and obligations under the plan." 29 U.S.C. 1022(a).

ERISA also requires that, in determining rights and benefits under the plan, the administrator act "in accordance with the documents and instruments governing the plan" and ERISA's other requirements, including the requirement that the SPD accurately reflect participants' rights. 29 U.S.C. 1104(a)(1)(D); see *Curtiss-Wright*, 514 U.S. at 82-83. Accordingly, a plan administrator would violate ERISA by interpreting the plan's terms to deny or restrict benefits to which the SPD states participants are entitled. For these reasons, the eleven courts of appeals that have considered the question have uniformly agreed that, when the SPD conflicts with less favorable terms described in other plan documents, the SPD controls. See *Burstein*, 334 F.3d at 378 & n.18 (citing cases).

Nonetheless, as the Second Circuit recognized in *Burke* v. *Kodak Retirement Income Plan*, 336 F.3d 103 (2003), cert. denied, 540 U.S. 1105 (2004), employees cannot collect additional benefits based on a conflict between the SPD and less favorable plan terms unless the employees have been prejudiced by the SPD violation. That rule is consistent with the general principle that courts do not provide relief for harmless errors. See *National Ass'n of Home Builders* v. *Defenders of Wildlife*, 551 U.S. 644, 659-660 (2007). A contrary rule would provide a windfall for some employees at the expense of plans and their sponsors. That, in turn, could adversely affect the solvency of plans or discourage employers from creating them, contrary to other important goals of ERISA. See 29 U.S.C. 1001, 1001a.

The Second Circuit has also adopted the appropriate framework for discerning when SPD errors are harmless. The participant first bears the burden of showing that he was likely harmed as a result of the deficient

SPD. *Burke*, 336 F.3d at 113. In this case, for example, the plaintiffs showed that the SPDs likely led participants to hold erroneous beliefs about their benefit accruals under the cash balance plan, which both affected the terms under which participants believed they continued to work for CIGNA and deprived them of the opportunity to take timely action in response to CIGNA's adoption of an amendment that significantly altered plan terms. Pet. App. 137a. In particular, the district court found that CIGNA's misrepresentations dissuaded participants from protesting the conversion to the cash balance plan, action that had resulted in rollbacks of similar proposed conversions at other companies. *Id.* at 113a-114a. Even after a participant has shown likely harm, however, the plan and its administrator can defeat the claim for additional benefits by showing that the SPD error was actually harmless. *Burke*, 336 F.3d at 113. For example, they might show that the participant had actual knowledge of the less favorable plan terms, *e.g.*, *Schad* v. *Stamford Health Sys., Inc.*, No. 08-5962-cv, 2009 WL 4981271, * 2 (2d Cir. Dec. 21, 2009), or that accurate SPDs were issued before the purportedly inaccurate ones could have had any adverse effect, *e.g.*, *Pierce* v. *Security Trust Life Ins. Co.*, 979 F.2d 23, 30 (4th Cir. 1992).[2]

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[2] Because the Second Circuit requires employees to prove likely harm before they can recover and further allows employers to preclude recovery by establishing that any violation was actually harmless, CIGNA is incorrect in arguing (Pet. 22) that the Second Circuit's approach is functionally equivalent to strict liability. Although CIGNA contends (*ibid.*) that some participants suffered no actual harm, the district court found that CIGNA failed to take advantage of the opportunities it was given to rebut the participants' showing of likely harm. See Pet. App. 166a.

The Second Circuit's approach is consistent with ERISA and the Department of Labor's regulations, which "place the burden on employers to draft an SPD that is accurate, comprehensible, and clear regarding restrictions on eligibility for benefits." *Burke*, 336 F.3d at 113. This approach also appropriately reflects the reality that an employee's accrual of pension benefits is part of the compensation offered by the employer for the employee's services. The terms of those benefits must be accurately reflected in the SPD and SMM. It is therefore fair to give effect to the SPD and SMM unless the employee knew of the less favorable plan terms and understood that they would govern.

The Second Circuit's approach also appropriately takes into account the genuine difficulty participants would face in proving precisely how they were affected by inaccurate disclosures, sometimes years after the fact. For example, many participants rely on oral representations and discussions with friends, coworkers, and colleagues for information about the plan. As a result, misstatements in SPDs can be propagated throughout the workplace and influence even employees who do not read them. Similarly, even if just a minority of participants would have read, communicated, or objected to the amended terms of the plan as described in an accurate SMM, the failure to correctly describe the amendment can have a widespread impact on participants; for example, by depriving them of the opportunity to protest and thereby secure the reversal of adverse changes to the plan—as the district court concluded occurred here. Pet. App. 113a-114a.

The Second Circuit's approach correctly declines to require each individual participant to prove detrimental reliance on the defective SPD. Because giving effect to

plan terms that conflict with the SPD violates ERISA, a rule giving effect to less favorable terms unless employees prove detrimental reliance on the SPD would not be consistent with the statutory scheme. Requiring proof of actual reliance would also undermine ERISA's fundamental goals. Beneficiaries would frequently be unable to satisfy that burden—especially beneficiaries of deceased participants who are unlikely to have evidence that the participants actually read the SPD and acted differently in response. *E.g.*, *Branch* v. *G. Bernd Co.*, 955 F.2d 1574, 1579-1580 & n.2 (11th Cir. 1992). At the same time, administrators would have little incentive to ensure the accuracy of the SPDs they are required by ERISA to furnish, which would frustrate ERISA's goal that participants understand their benefits.

Finally, a requirement that participants demonstrate individualized reliance would also be contrary to ERISA's broader goals of ensuring efficiency, predictability, and uniformity in plan administration, see *Conkright* v. *Frommert*, 130 S. Ct. 1640, 1649 (2010). A reliance requirement would likely preclude class treatment of SPD benefit claims, see *Heffner* v. *Blue Cross & Blue Shield*, 443 F.3d 1330, 1340 (11th Cir. 2006), and cause benefits under a single plan to vary based on the memories of individual participants and their ability to document how they acted in response to inaccuracies in the SPD.

2. CIGNA is mistaken in arguing (Pet. 23) that the decision below conflicts with this Court's decision in *Curtiss-Wright*. In *Curtiss-Wright*, the district court concluded that a revision to an SPD purporting to terminate health benefits was an invalid plan amendment because neither the SPD nor the other plan documents contained an amendment procedure, and the court of

appeals affirmed. 514 U.S. at 75-77. This Court reversed, agreeing with the employer that a provision in the plan's constitution, which gave the company the right at any time to amend the plan, satisfied the requirement in 29 U.S.C. 1102(b)(3) that every plan specify an amendment procedure. 514 U.S. at 78-81. The Court remanded for the lower courts to decide whether the appropriate company officials had approved the new SPD provision. *Id.* at 85.

As noted above, eleven courts of appeals have held that the SPD controls when it materially conflicts with plan terms that are less favorable to participants, and none has viewed *Curtiss-Wright* as an impediment to that holding. The conclusion that the SPD trumps inconsistent plan terms presents no conflict with *Curtiss-Wright* because that conclusion does not rest on the theory that the SPD has formally amended the plan. Instead, as described above, it rests on the legal proposition that a plan administrator cannot give effect to less favorable plan terms that conflict with the SPD without violating ERISA's command that the administrator act in accordance with governing plan documents and ERISA's requirements. See 29 U.S.C. 1104(a)(1)(D).[3]

3. As CIGNA notes (Pet. 12-20), other courts of appeals have taken somewhat different views than the Second Circuit of what additional showing, if any, a participant must make to obtain benefits based on a material conflict between the SPD and the plan terms as described in other plan documents. Five circuits (the First, Fourth, Seventh, Eighth, and Tenth) require a participant to show "significant reliance upon, or possi-

[3] Unlike this and other cases that give effect to more favorable terms in SPDs, the new SPD provision in *Curtiss-Wright* was less favorable to participants.

ble prejudice flowing from, the faulty plan description." *Govoni* v. *Bricklayers, Masons & Plasterers Int'l Union of Am.*, 732 F.2d 250, 252 (1st Cir. 1984) (Breyer, J.); *Aiken* v. *Policy Mgmt. Sys. Corp.*, 13 F.3d 138, 142 (4th Cir. 1993); *Hightshue* v. *AIG Life Ins. Co.*, 135 F.3d 1144, 1149 (7th Cir. 1998); *Harris* v. *Blue Cross Blue Shield*, 995 F.2d 877, 880 (8th Cir. 1993); *Chiles*, 95 F.3d at 1519. The Eleventh Circuit requires proof of detrimental reliance. See *Heffner*, 443 F.3d at 1340. And three circuits (the Third, Fifth, and Sixth) do not require any further showing beyond a material and clear conflict between the SPD and plan terms. See *Washington* v. *Murphy Oil USA, Inc.*, 497 F.3d 453, 458-459 & n.2 (5th Cir. 2007); *Burstein*, 334 F.3d at 380-382; *Edwards* v. *State Farm Mut. Auto. Ins. Co.*, 851 F.2d 134, 135, 137 (6th Cir. 1988).

Although this Court's intervention may be warranted at some point to resolve this disagreement among the courts of appeals, this case is not an appropriate vehicle to resolve it, for four related reasons. First, this case presents the issue in an unusual factual setting that is not likely to recur. CIGNA's SPDs misrepresented that the method it had chosen to convert from its traditional defined benefit plan to a cash balance plan would not cause employees to experience "wear away" periods in which they would work without accruing additional retirement benefits. Those misrepresentations harmed all affected employees by preventing a critical mass from mounting the kind of protest that had led other companies to revise cash balance conversions that had similarly disadvantaged participants. Indeed, the district court found that CIGNA withheld accurate information from employees to avoid that very consequence. See Pet. App. 113a-114a. No court of appeals that applies a

significant reliance or possible prejudice standard has considered this type of situation, and those courts might well agree with the courts below that such harm is sufficient to entitle affected employees to relief. But other courts are not likely to consider the issue in comparable circumstances because a cash-balance transition with "wear away" is now illegal. See p. 4, *supra* (describing PPA, 29 U.S.C. 1054(b)(5)(B)(iii)).

Second, the 2001 amendments to ERISA Section 204(h) specifically address the question of remedy in a case like this one, which involves defective notice of a plan amendment reducing the future accrual of benefits. The statute now expressly provides that such an amendment cannot be given effect if there is an "egregious" violation of the notice requirements. 29 U.S.C. 1054(h)(6). The consequences of violations like the one at issue here will now be addressed primarily under that special standard.

Third, CIGNA's failure to take advantage of opportunities to discover whether individual class members were actually harmed makes it unclear whether the Second Circuit's standard made a difference in this case. CIGNA argues that the result would have been different in the First, Fourth, Seventh, Eighth, Tenth, and Eleventh Circuits because those courts require every participant "to make an individualized showing that they relied on or were prejudiced by" the defective SPDs. Pet. 19. But the district court declined to undertake individualized inquiries here because CIGNA had failed to take advantage of earlier opportunities to discover whether individual class members were actually harmed by the SPDs. Pet. App. 166a. The court of appeals affirmed based on the district court's reasoning. *Id.* at 4a. It therefore cannot be determined whether CIGNA's liabil-

ity resulted from a difference between the Second Circuit's standard and those applied by other circuits or, instead, from CIGNA's own litigation decisions.

Finally, the likely harm issue may be irrelevant to the outcome here because CIGNA not only violated ERISA's SPD requirements but also made similar misrepresentations that violated Section 204(h). The district court recognized that it had the legal authority to remedy the Section 204(h) violation by reinstating the pre-conversion benefit formula. Pet. App. 187a-191a. The court decided not to provide that remedy for the Section 204(h) violation, however, in part because that would have required invalidation of the initial amendment freezing benefits under the pre-conversion plan, which the plaintiffs had not independently challenged, *id.* at 188a-189a, but also because the remedy for the SPD violation already provided participants with significant relief, *id.* at 192a. If the SPD remedial issue were resolved in CIGNA's favor, and participants could no longer receive additional benefits as a remedy for the SPD violation, the district court might well reconsider its choice of remedy for the Section 204(h) violation and choose a remedy comparable to the one it originally provided for the SPD violation.

This Court should deny CIGNA's petition for a writ of certiorari.

B. The Issues In No. 09-784 Do Not Warrant This Court's Review

The Court should also deny the Amara plaintiffs' petition. They make no claim that the decision below conflicts with any decision of this Court or another court of appeals. Instead, they raise only fact-specific chal-

lenges to the district court's remedial decision that do not warrant this Court's review.

The district court provided a fair remedy tailored to CIGNA's misrepresentations. CIGNA misled participants into believing that all of their accrued benefits under the pre-conversion plan would be reflected in the cash balance opening accounts and that they would accrue additional benefits under the cash balance plan without "wear away" periods. The court's remedy corrected both of those misrepresentations by requiring CIGNA to pay benefits using the "A plus B" approach, under which participants receive both their accrued benefits under the pre-conversion formula (Part A), frozen as of the date of the conversion, and the new benefits provided by the cash balance formula (Part B). Pet. App. 196a; see p. 4, *supra*. Moreover, the court's remedy gave participants precisely what Congress now requires an employer to provide when it converts to a cash balance plan. See *ibid.* (describing PPA, 29 U.S.C. 1054(b)(5)(B)(iii)).

The Amara petitioners contend (09-784 Pet. 23-26) that the district court abused its discretion in declining to provide additional relief for CIGNA's statement in the SMM that the cash balance plan would provide benefits "comparable" to the benefits under the traditional plan. But the Amara petitioners conceded in the district court that the court's remedial authority did not extend to rewriting the terms of the plan. See Pet. App. 201a. The district court therefore did not abuse its discretion in declining to rewrite the plan to comply with the vague promise of "comparable" benefits. *Ibid.* Moreover, the "A plus B" approach that the court ordered as a remedy for CIGNA's other misrepresentations, although it did not provide benefits identical to those under the pre-

conversion plan, provided substantial relief for any violation based on a promise of "comparable" benefits.

The Amara petitioners also contend (09-784 Pet. i, 15-23) that the district court erred because it purportedly concluded that it lacked authority to reinstate the pre-conversion formula as a remedy for CIGNA's Section 204(h) violation. Contrary to that contention, the court understood that it had the authority to reinstate the pre-conversion formula, Pet. App. 187a-191a, but it "determine[d], in an exercise of its equitable powers," that reinstatement was "not an appropriate remedy," *id.* at 191a. The court reasoned that reinstatement would have required the invalidation of the initial amendment freezing benefits under the pre-conversion plan, which the Amara petitioners had not independently challenged, and that the "A plus B" remedy already provided substantial relief. *Id.* at 188a-189a, 192a.

As the Amara petitioners recognize (09-784 Pet. 15), a district court has broad discretion to determine the appropriate remedy for ERISA violations. The district court did not abuse that discretion here. In any event, even if the court misunderstood the scope of its remedial authority under the version of Section 204(h) then in effect, Congress has since amended that provision to address expressly the available remedies. See p. 2, *supra* (citing 29 U.S.C. 1054(h)(6)). Whether the district court misapprehended the remedies available under the prior version of Section 204(h) is thus of little continuing importance.

The issues raised by the Amara petition do not warrant this Court's review.

C. The Court Need Not Grant, Vacate, And Remand In Light Of *Conkright*

In its recent decision in *Conkright*, this Court held that an administrator with discretionary authority to interpret a plan, who makes a "single honest mistake in plan interpretation," is entitled to deference for "subsequent related interpretations of the plan." 130 S. Ct. at 1644. Contrary to the suggestions of the respective petitioners—which were made before the decision in *Conkright* and were therefore necessarily speculating about its impact—the Court need not grant, vacate, and remand (GVR) this case for further consideration in light of that decision.

CIGNA contended (Pet. 24-26) that a GVR would be warranted because the lower courts did not defer to the remedy that CIGNA proposed for its ERISA violations. But CIGNA did not ask the district court to defer to its remedial proposal as a matter of plan interpretation. Instead, CIGNA argued, without asking for deference, that the proposal was supported by the testimony of the participants' expert. See Pet App. 197a-198a; Defs.' Mem. on Individual Issues and Class Relief 27; Defs.' Resps. to the Court's Apr. 30, 2008, Inquiries 5. And, in the court of appeals, CIGNA did not even request the court to adopt the remedy it had proposed in the district court, much less ask for deference. See CIGNA C.A. Br. 2-61. Accordingly, CIGNA has not preserved any claim to which *Conkright* is pertinent.

As for the Amara petitioners, their request for relief based on *Conkright* was premised on the supposition that it would address the scope of a district court's "allowable discretion" in fashioning ERISA remedies. 09-784 Pet. 13. To the extent *Conkright* addresses that question, however, it holds only that the district court

must in some circumstances defer to an administrator's plan interpretation. That holding provides no basis for any further relief for the Amara petitioners. A remand in light of *Conkright* is therefore not warranted.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 2010

JOINT APPENDIX

Supreme Court, U.S.
FILED
AUG 27 2010
OFFICE OF THE CLERK

No. 09-804

IN THE
Supreme Court of the United States

CIGNA CORPORATION AND CIGNA PENSION PLAN,
Petitioners,

v.

JANICE C. AMARA ET AL., individually and on behalf of all others similarly situated,
Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

JOINT APPENDIX
Volume 1 of 3
(Pages 1a-376a)

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PETITION FOR WRIT OF CERTIORARI FILED JANUARY 4, 2010
CERTIORARI GRANTED JUNE 28, 2010

32911

TABLE OF CONTENTS

Page

Docket Entries from the United States Court of Appeals for the Second Circuit, No. 08-3388-cv 1a

Docket Entries from the United States District Court for the District of Connecticut, No. 3:01-cv-02361-MRK 14a

Memorandum of Decision Granting Motion To Certify Putative Class (Dec. 20, 2002) 96a

Third Amended Class Action Complaint for Declaratory and Injunctive Relief Under ERISA (Feb. 17, 2006) 105a

Answer and Affirmative Defenses of Defendants CIGNA Corporation and CIGNA Pension Plan to Third Amended Class Action Complaint (Mar. 6, 2006) 123a

Stipulation and Joint Motion on Conduct of Discovery and Trial on "Likely Prejudice" and "Harmless Error" Issues Connected with Second and Fourth Claims for Relief (Mar. 10, 2006) 138a

Trial Transcript Excerpts

Testimony of Janice C. Amara (Sept. 11, 2006) 147a

Testimony of Gisela Broderick (Sept. 11, 2006) 159a

Testimony of Annette Glanz (Sept. 11, 2006) 182a

Testimony of Claude Poulin (Sept. 11, 2006) 189a

Testimony of James Stratman (Sept. 13, 2006) 196a

Testimony of Robert John Upton (Sept. 14, 2006) 201a

Testimony of Barbara Hogan (Sept. 14, 2006) 212a

Testimony of Bruce A. Charette (Sept. 14, 2006) 227a

Testimony of Patricia Flannery (Sept. 15, 2006) 240a

Testimony of Lawrence Sher (Sept. 15, 2006) 255a

Testimony of Claude Poulin (Jan. 25, 2007) 264a

Order Under Rule 23(c)(1)(B) (Mar. 12, 2007) 270a

Defendant's Responses and Objections to Plaintiffs' Proposed Post-Trial Findings of Fact (June 25, 2007) 283a

District Court Oral Argument Transcript (April 30, 2008) 302a

Brief of Defendants-Appellees / Cross-Appellants in Response to Plaintiffs-Appellants' Brief and in Support of Their Cross-Appeal (Jan. 13, 2009) 316a

Court of Appeals Oral Argument Transcript (May 21, 2009) 377a

Trial Exhibits

Exhibit 1 ..... 396a
Exhibit 2 ..... 539a
Exhibit 47 ..... 749a
Exhibit 48 ..... 752a
Exhibit 58 ..... 755a
Exhibit 115 ..... 771a
Exhibit 117 ..... 811a
Exhibit 119 ..... 834a
Exhibit 120 ..... 835a
Exhibit 121 ..... 837a
Exhibit 124 ..... 838a
Exhibit 128 ..... 844a
Exhibit 129 ..... 856a
Exhibit 130 ..... 874a
Exhibit 131 ..... 890a
Exhibit 133 ..... 893a
Exhibit 140 ..... 897a
Exhibit 505 ..... 902a
Exhibit 506 ..... 923a
Exhibit 508 ..... 939a
Exhibit 516 ..... 990a
Exhibit 598 ..... 996a

The following opinions and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the petition for a writ of certiorari:

Opinion of the United States Court of Appeals for the Second Circuit 1a

Opinion of the United States District Court for the District of Connecticut (Feb. 15, 2008) 5a

Opinion of the United States District Court for the District of Connecticut (June 13, 2008) 160a

General Docket
Second Circuit Court of Appeals

Court of Appeals Docket #: 08-3388-cv Filed: 7/8/08

Nsuit: 3890

Amara v. CIGNA Corp., et al

STATUTES - Other

Appeal from: CONNECTICUT (NEW HAVEN)

Date Filed	Docket Text
7/8/08	Copy of notice of appeal and district court docket entries on behalf of APPELLANT Annette Glanz, Gisela Broderick, Janice Amara, filed. [Entry date Jul 11 2008][AJ]
7/8/08	Copy of district court judgment dated 06/13/08 RECEIVED. [Entry date Jul 11 2008] [AJ]
7/8/08	Letter sent to APPELLANT Annette Glanz, Gisela Broderick, Janice Amara, : Forms C&D due 07/18/08. [Entry date Jul 11 2008] [AJ]
7/17/08	APPELLANT Annette Glanz, Gisela Broderick, Janice Amara, Form C filed, with proof of service. [Entry date Jul 18 2008] [AJ]

7/17/08	APPELLANT Annette Glanz, Gisela Broderick, Janice Amara, Form D filed, with proof of service. [Entry date Jul 18 2008] [AJ]
7/18/08	Notice of appeal acknowledgment letter from Stephen Bruce received. [Entry date Jul 21 2008] [AJ]
7/23/08	Scheduling order #1 filed. Record on appeal due 8/26/2008. Appellants brief due 9/2/2008. Appellees brief due 10/2/2008. Response due plra 11/3/2008. Ready week 12/15/2008. [Entry date Jul 24 2008] [AJ]
7/23/08	Telephonic Pre-Argument Conference Notice and Order from Stanley A. Bass, Scheduled For: Tuesday August 12, 2008 @ 11:45am, Filed. [Entry date Jul 24 2008] [AJ]
7/25/08	The new case manager assigned to this case is: Polakowski, Margaret. [Entry date Jul 25 2008] [ML]
7/30/08	Notice of appeal acknowledgment letter from Joseph Costello received. [Entry date Jul 31 2008] [ML]
8/12/08	Scheduling order #2 filed. Record on appeal due 9/25/2008. Appellants brief due 10/2/2008. Appellees brief due 11/3/2008. Appellant's reply brief due 12/3/2008. Appellees brief due 12/17/2008. Ready week 1/26/2009. (SB) [Entry date Aug 13 2008] [CI]
8/13/08	Notice to counsel in re: Scheduling Order #2 filed on 8/12/2008. [Entry date Aug 13 2008] [CI]

8/13/08	APPELLANT Annette Glanz, Gisela Broderick, Janice Amara; reply brief due 12/3/2008. [Entry date Aug 13 2008] [CI]
8/13/08	APPELLEE CIGNA Corp, CIGNA Pension Plan, reply brief may be filed by 12/17/2008. [Entry date Aug 13 2008] [CI]
9/16/08	9/16/08 Appellee CIGNA Corp, Appellee CIGNA Pension Plan motion for leave to file deferred appendix filed with proof of service. [Entry date Sep 17 2008] [ML]
9/19/08	APPELLANT Annette Glanz, Gisela Broderick, Janice Amara, reply brief due 12/03/08. [Entry date Sep 19 2008] [ML]
9/19/08	APPELLEE CIGNA Corp, CIGNA Pension Plan, reply brief due 12/17/08. [Entry date Sep 19 2008] [ML]
9/24/08	Notice to counsel in re: Order filed 9/24/2008 granting Appellee's motion for leave to file a deferred appendix. [Entry date Sep 24 2008] [CI]
9/24/08	Order FILED GRANTING the motion for leave to file a deferred appendix by Appellee CIGNA Corp, Appellee CIGNA Pension Plan, endorsed on motion dated 9/16/2008. "IT IS HEREBY ORDERED that Appellee's motion for leave to file a deferred appendix is GRANTED." Before: Hon. PWH, CJ. (JP) [Entry date Sep 24 2008] [CI]

9/25/08	Index in lieu of Record on Appeals Electronically Filed Original documents remain in the originating court). [Entry date Sep 30 2008] [YS]
10/2/08	Notice of Appearance Filed by Stephen Bruce on behalf of Appellants Amara, Broderick, Glanz, et al. (Orig in acco, copy to Calendar and Admissions Dept.). [Entry date Oct 2 2008] [ML]
10/2/08	Notice of Appearance Filed by Thomas Moukawsher on behalf of Appellant Moukawsher. (Orig in acco, copy to Calendar and Admissions Dept.). [Entry date Oct 2 2008] [ML]
10/2/08	APPELLANT Annette Glanz, Gisela Broderick, Janice Amara; APPELLEE CIGNA Corp, CIGNA Pension Plan, brief and addendum in page proof form with proof of service filed.
10/8/08	AMENDED order stating that Appellee for leave to file a deferred appendix is GRANTED. Appellant form is deemed filed on 10/02/08. Appellee 11/03/08; and Appellant page-proof form is due 12/17/08. The deferred appendix is due 01/06/09, and the final form briefs are due 01/13/09. The appeal may be heard as early as the week of 03/02/09, Filed. (PWH, CJ; by: JP) [Entry date Oct 8 2008] [ML]
10/8/08	Notice to counsel in re: Amended Order filed 10/08/08. [Entry date Oct 8 2008] [ML]

10/8/08	APPELLANT Annette Glanz, Gisela Broderick, Janice Amara; APPELLEE CIGNA Corp, CIGNA Pension Plan, reply brief Page Proof due 12/17/2008. [Entry date Oct 8 2008] [ML]
10/14/08	AMICUS CURIAE AARP Foundation Litigation, National Employment Lawyers Association, brief received. [Entry date Oct 29 2008] [ML]
10/14/08	Amicus Curiae AARP Foundation Litigation, Amicus Curiae National Employment Lawyers Association motion for leave to file brief amicus curiae filed with proof of service. [Entry date Oct 15 2008] [ML]
10/16/08	Notice to counsel in re: Order filed 10/16/08. [Entry date Oct 16 2008] [ML]
10/16/08	Order FILED REFERRING motion to file brief as amicus curiae by Amicus Curiae AARP Foundation Litigation, Amicus Curiae National Employment Lawyers Association, endorsed on motion dated 10/14/2008 (JP) [Entry date Oct 16 2008] [ML]
11/14/08	APPELLANT Annette Glanz, Gisela Broderick, Janice Amara; APPELLEE CIGNA Corp, CIGNA Pension Plan, brief in page proof form filed wi proof of service. [Entry date Nov 6 2008] [ML]

11/10/08	Notice of Appearance Filed by Joseph Costello on behalf of Appellees CIGNA Corp. and CIGNA Pension Plan. (Orig in acco, copy to Calendar and Admissions Dept.). [Entry date Nov 12 2008] [ML]
11/10/08	Notice of Appearance Filed by Jeremy Blumenfeld on behalf of Appellees CIGNA Corp. and CIGNA Pension Plan. (Orig in acco, copy to Calendar and Admissions Dept.). [Entry date Nov 12 2008] [ML]
11/10/08	Notice of Appearance Filed by Jamie Kohen on behalf of Appellees CIGNA Corp. and CIGNA Pension Plan. (Orig in acco, copy to Calendar and Admissions Dept.). [Entry date Nov 12 2008] [ML]
12/3/08	Appellant Janice Amara motion for amendment of scheduling order filed with proof of service. [Entry date Dec 4 2008] [ML]
12/5/08	Notice to counsel in re: Order, filed 12/5/2008, granting Appellant's motion to amend Scheduling Order, dated October 8, 2008. [Entry date Dec 5 2008] [CI]

12/5/08	Order FILED GRANTING motion to amend current Scheduling Order, dated October 8, 2008 by Appellant Janice Amara, endorsed on motion dated 2/3/2008. "IT IS HEREBY ORDERED that Appellants-Cross-Appellees' reponse and reply brief in page-proof form is due on or before December 5, 2008. Appelees-Cross-Appellants' Reply in page-proof form is due on or before December 19, 2008. The deferred appendix is due on or before January 6, 2009 and the final form briefs are due on or before January 13, 2009. " For the Court: (JF, Administrative Attorney) [Entry date Dec 5 2008] [CI]
12/8/08	APPELLANT Annette Glanz, Gisela Broderick, Janice Amara, reply brief in page proof form filed with proof of service. [Entry date Dec 8 2008] [ML]
12/22/08	APPELLEE CIGNA Corp, CIGNA Pension Plan, reply brief filed with proof of service. [Entry date Dec 22 2008] [ML]
12/30/08	Argument Requested - Local Rule 34 Acknowledgment Returned by APPELLANT Annette Glanz, Gisela Broderick, Janice Amara, [All parties seek oral argument] [Entry date Jan 9 2009] [CI]

1/7/09	APPELLANT Janice Amara, et al., DEFERRED joint appendix filed, with proof of service. [Entry date Jan 8 2009] [ML]
1/7/09	APPELLANT Janice Amara, et al., special appendix filed(w/pfs) [Entry date Jan 8 2009] [ML]
1/7/09	APPELLANT Janice Amara, et al., exhibits (vol. 1 of 4, E1 E621) filed with proof of service. [Entry date Jan 8 2009] [ML]
1/7/09	APPELLANT Janice Amara, et al., exhibits (vol. 2 of 4, E622-E1493) filed with proof of service. (see vol. 1 entry for full pdf) [Entry date Jan 8 2009] [ML]
1/7/09	APPELLANT Janice Amara, et al., exhibits (vol. 3 of 4, E1494-E2191) filed with proof of service. (see vol. 1 entry for full pdf) [Entry date Jan 8 2009] [ML]
1/7/09	APPELLANT Janice Amara, et al., exhibits (vol. 4 of 4, E2192 E2736) filed with proof of service. (see vol. 1 entry for full pdf) [Entry date Jan 8 2009] [ML]
1/7/09	APPELLANT Janice Amara, et al., Transcript (vol. 1 of 3, Tr.1-634) filed, w/pfs. [Entry date Jan 8 2009] [ML]
1/7/09	APPELLANT Janice Amara, et al., Transcript (vol. 2 of 3, Tr.635-1229) filed, w/pfs. (see vol. 1 entry for full pdf) [Entry date Jan 8 2009] [ML]

1/7/09	APPELLANT Janice Amara, et al., Transcript (vol. 3 of 3, Tr.1230-1884) filed, w/pfs. (see vol. 1 entry for full pdf) [Entry date Jan 8 2009] [ML]
1/14/09	APPELLANT Annette Glanz, Gisela Broderick, Janice Amara, brief in final form with proof of service filed. [Entry date Jan 14 2009] [ML]
1/14/09	APPELLEE CIGNA Corp, CIGNA Pension Plan, brief in final form with proof of service filed. [Entry date Jan 14 2009] [ML]
1/14/09	APPELLANT Annette Glanz, Gisela Broderick, Janice Amara, REPLY BRIEF in final form filed. (w/pfs) [Entry date Jan 14 2009] [ML]
1/14/09	APPELLEE CIGNA Corp, CIGNA Pension Plan, REPLY BRIEF in final form filed. (w/pfs) [Entry date Jan 14 2009] [ML]
3/2/09	Letter dated 03/02/2009 received from Denise M. Dellaratta, Esq., in re: unavailable dates for oral argument. [Entry date Mar 3 2009] [ML]
3/6/09	Appellant Janice Amara motion for expediting oral argument filed with proof of service. [Entry date Mar 6 2009] [ML]
3/16/09	Order FILED GRANTING motion for expediting oral argument by Appellant Janice Amara, endorsed on motion dated 3/6/2009. (before: DAL, CJ; by: JF) [Entry date Mar 17 2009] [ML]

3/17/09	Notice to counsel in re: Order filed 03/16/2009. [Entry date Mar 17 2009] [ML]
3/25/09	Proposed for argument the week of 5/18/09 B Panel [Entry date Mar 25 2009] [DC]
4/7/09	Set for argument on 5/21/09 B Panel at 2pm [Entry date Apr 7 2009] [DC]
4/9/09	Calendar argument notice mailed to attorneys/parties. [Entry date Apr 9 2009] [LY]
4/14/09	AMICUS CURIAE AARP Foundation Litigation, National Employment Lawyers Association, brief filed with proof of service. [Entry date Apr 15 2009] [AV]
4/14/09	Order FILED GRANTING motion to file brief as amicus curiae by Amicus Curiae AARP Foundation Litigation, Amicus Curiae National Employment Lawyers Association, endorsed on motion dated 3/6/2009. [Entry date Apr 15 2009] [AV]
4/15/09	Notice to counsel re:Order granting motion for leave to file amici curiae brief. [Entry date Apr 15 2009] [AV]
4/27/09	Appellant Janice Amara, et al. motion for two attorneys to present argument filed with proof of service. [Entry date Apr 27 2009] [ML]

4/30/09	Order FILED GRANTING motion allow oral argument by Appellant Janice Amara, endorsed on motion dated 4/27/2009 [Entry date May 1 2009] [SC]
5/1/09	Notice to counsel re: motion for 2 attorney's Granted [Entry date May 1 2009] [SC]
5/21/09	Case heard before JACOBS, CH. J., KEARSE, STRAUB, C.JJ. [Entry date May 21 2009] [LY]
6/4/09	Oral argument CD mailed to Stephen Bruce . [Entry date Jun 9 2009] [CA]
10/6/09	Judgment filed; judgment of the district court is AFFIRMED by detailed order of the court without opinion filed. (DJ) [Entry date Oct 6 2009] [DB]
10/6/09	Notice to counsel in re: Summary Order filed 10/6/2009. [Entry date Oct 6 2009] [DB]
10/20/09	APPELLANT Annette Glanz, Gisela Broderick, Janice Amara, itemized and verified bill of costs received, w/pfs. [Entry date Oct 20 2009] [ML]
10/27/09	APPELLEE CIGNA Corp, CIGNA Pension Plan, itemized and verified bill of costs received, w/pfs. (awaiting motion to file late) [Entry date Oct 27 2009] [ML]
10/27/09	Appellee CIGNA Corp, Appellee CIGNA Pension Plan motion for stay of mandate filed with proof of service. [Entry date Oct 27 2009] [ML]

10/29/09	Letter dated 10/29/2009 received from Jamie M. Kohen, Esq., in re: formal withdrawal of Appellees verified itemized bill of costs. [Entry date Oct 30 2009] [ML]
10/29/09	APPELLEE CIGNA Corp, CIGNA Pension Plan, opposition to bill of costs with proof of service filed. [Entry date Oct 30 2009] [ML]
11/10/09	Appellant Annette Glanz, Appellant Gisela Broderick, Appellant Janice Amara, opposition to motion to stay the mandate filed with proof of service. [Entry date Nov 10 2009] [ML]
11/16/09	Order FILED GRANTING motion for stay of mandate unitl 12/06/2009 by Appellee CIGNA Corp, Appellee CIGNA Pension Plan, endorsed on motion dated 10/27/2009. (before: DJ, ALK, CJS, CJJ; by: JF) [Entry date Nov 17 2009] [ML]
11/17/09	Notice to counsel in re: Order filed 11/16/2009. [Entry date Nov 17 2009] [ML]
11/19/09	Appellee CIGNA Corp, Appellee CIGNA Pension Plan reply to motion to stay the mandate filed with proof of service. [Entry date Nov 19 2009] [ML]
11/23/09	Oral argument cd mailed to Charles Calvaruso. [Entry date Nov 23 2009] [AG]

12/11/09	Judgment MANDATE ISSUED. CLOSED [Entry date Dec 11 2009] [AG]
12/11/09	Notice to counsel in re: Mandate issued 12/11/09. [Entry date Dec 11 2009] [AG]
1/8/10	Notice of filing petition for APPELLANT Janice Amara, dated 01/04/2010 filed. Supreme Court #: 09-784. [Entry date Jan11 2010] [ML]
1/25/10	Notice of filing petition for APPELLEE CIGNA Corp, CIGNA Pension Plan, dated 01/06/2010, filed. Supreme Court #: 09-804. [Entry date Jan 25 2010] [ML]
2/1/10	Jordan Faykus receipt for fee for oral argument tape received. [Entry date Feb 16 2010] [AG]
2/5/10	Letter received from J. Faykus w/Baker & McKenzie requesting an oral argument tape. Fee pd Forward to calendar. 204657. [Entry date Feb 5 2010] [VM]
2/23/10	Oral argument cd mailed to Jordan Faykus. [Entry date Feb 23 2010] [AG]
7/7/10	U.S. SUPREME COURT LETTER, dated 06/28/2010, granting writ of certiorari, FILED. [Entry date Jul 7 2010] [ML]
7/7/10	Writ of Certiorari GRANTED. [Entry date Jul 7 2010] [ML]

U.S. District Court
United States District Court for the District of Connecticut (New Haven)
CIVIL DOCKET FOR CASE #: 3:01-cv-02361-MRK

Amara v. CIGNA Corp., et al
Assigned to: Judge Mark R. Kravitz
Demand: $0
Cause: 29: 1132 E.R.I.S.A. – Employee Benefits

Date Filed: 12/19/2001
Date Terminated: 06/13/2008
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Date Filed	#	Docket Text
12/19/2001	1	COMPLAINT Filing Fee $ 150.00 Receipt #H5009 (D'Onofrio, B.) (Entered: 12/19/2001)
12/19/2001		SUMMONS(ES) issued for CIGNA Corp, CIGNA Pension Plan (D'Onofrio, B.) (Entered: 12/19/2001)
12/19/2001	2	ORDER on Pretrial Deadlines handed to counsel Discovery cut-off 6/20/02; Dispositive Motions due 7/20/02 Amended Pleadings due 2/19/02 Motions to Dismiss due 3/19/02 (D'Onofrio, B.) (Entered: 12/19/01)
12/19/2001	3	ORDER re: Discovery to commence immediately (signed by Judge Dominic J. Squatrito) (D'Onofrio, B.) (Entered:

		12/19/2001)
12/19/2001	4	APPEARANCE of Attorney for Janice C. Amara – Jeffrey M. Sklarz (D'Onofrio, B.) (Entered: 12/19/2001)
12/19/2001	5	APPEARANCE of Attorney for Janice C. Amara – Thomas G. Moukawsher (D'Onofrio, B.) (Entered: 12/19/2001)
12/21/2001		SUMMONS(ES) issued for CIGNA Corp (Gothers, M.) (Entered: 12/21/2001)
01/14/2002	6	APPEARANCE of Attorney for CIGNA Corp, CIGNA Pension Plan – James A. Wade (Warner, R.) (Entered: 01/16/2002)
01/14/2002	7	APPEARANCE of Attorney for CIGNA Corp, CIGNA Pension Plan – Erin K. O'Brien (Warner, R.) (Entered: 01/16/2002)
02/13/2002	8	MOTION by CIGNA Corp, CIGNA Pension Plan for Christopher A. Parlo to Appear Pro Hac Vice (Fazekas, J.) (Entered: 02/14/2002)
02/19/2002		ENDORSEMENT granting [8-1] motion for Christopher A. Parlo to Appear Pro Hac Vice (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 02/19/2002)
02/19/2002	9	MOTION by CIGNA Corp, CIGNA Pension Plan to Stay Discovery Pending the Resolu-

		tion of Defendant's Motion to Dismiss the Complaint (Brief Due 2/12/02) (Gothers, M.) (Entered: 02/20/2002)
02/19/2002	10	MEMORANDUM by CIGNA Corp, CIGNA Pension Plan in support of [9-1] motion to Stay Discovery Pending the Resolution of Defendant's Motion to Dismiss the Complaint (Gothers, M.) (Entered: 02/20/2002)
02/19/2002	11	MOTION by CIGNA Corp, CIGNA Pension Plan to Dismiss complaint (Brief Due 3/12/02) (Gothers, M.) (Entered: 02/20/2002)
02/19/2002	12	MEMORANDUM by CIGNA Corp, CIGNA Pension Plan in support of [11-1] motion to Dismiss complaint (Gothers, M.) (Entered: 02/20/2002)
02/19/2002	13	AFFIDAVIT of Christopher A. Parlo by CIGNA Corp, CIGNA Pension Plan Re [11-1] motion to Dismiss complaint (Gothers, M.) (Entered: 02/20/2002)
02/19/2002	32	MOTION by Janice C. Amara to Extend Time for 60 days to move for class certification (Gothers, M.) (Entered: 06/12/2002)
02/20/2002	14	SUMMONS Returned Executed on 1/14/02 as to CIGNA Corp (Gothers, M.) (Entered: 02/20/2002)

02/25/2002		ENDORSEMENT denying [9-1] motion to Stay Discovery Pending the Resolution of Defendant's Motion to Dismiss the Complaint (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 02/26/2002)
02/28/2002	15	Notice to counsel regarding 26(f). Report of Conference due 3/15/02 (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 03/01/2002)
02/28/2002	16	APPEARANCE of Attorney for CIGNA Corp, CIGNA Pension Plan – Christopher A. Parlo (Gothers, M.) (Entered: 03/04/2002)
03/11/2001	17	MEMORANDUM by Janice C. Amara in opposition to [11-1] motion to Dismiss complaint by CIGNA Pension Plan, CIGNA Corp (Gothers, M.) (Entered: 03/13/2002)
03/13/2002		ENDORSEMENT denying without prejudice [11-1] motion to Dismiss complaint (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 03/14/2002)
03/15/2002	18	REPORT of Parties Planning Meeting (Gothers, M.) (Entered: 03/15/2002)
03/15/2002	19	MOTION by Janice C. Amara for Stephen R. Bruce to Appear Pro

		Hac Vice (Gothers, M.) (Entered: 03/15/2002)
03/19/2002	20	ORDER approving [18-1] report, reset Dispositive Motions due by 11/19/02, set Filing Trial Memorandum due by 12/19/02 Trial ready January, 2003 (signed Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 03/19/2002)
03/19/2002		ENDORSEMENT granting [19-1] motion for Stephen R. Bruce to Appear Pro Hac Vice (singed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 03/19/2002)
03/28/2002	21	ANSWER/Affirmative Defenses to Complaint by CIGNA Corp, CIGNA Pension Plan (Gothers, M.) (Entered: 03/28/2002)
04/03/2002	22	APPEARANCE of Attorney for Janice C. Amara – Stephen R. Bruce (Gothers, M.) (Entered: 04/04/2002)
04/03/2002	23	MOTION by Janice C. Amara to Certify Class (Gothers, M.) (Entered: 04/04/2002)
04/03/2002	24	MEMORANDUM by Janice C. Amara in support of [23–1] motion to Certify Class (Gothers, M.) (Entered: 04/04/2002)
04/12/2002	25	MOTION by Janice C. Amara to Amend [1–1] complaint (Brief Due 5/3/02) (Gothers, M.) (En-

		tered: 04/15/2002)
04/12/2002	26	MEMORANDUM by Janice C. Amara in support of [25–1] motion to Amend [1–1] complaint (Gothers, M.) (Entered: 04/15/2002)
04/23/2002	27	Stipulation &MOTION by Janice C. Amara, CIGNA Corp, CIGNA Pension Plan to Extend Time until 5/3/02 to respond to Motion for Class Certification (Gothers, M.) (Entered: 04/23/2002)
04/24/2002		ENDORSEMENT granting [27–1] motion to Extend Time until 5/3/02 to respond to Motion for Class Certification, Brief Deadline reset for 5/3/02 [25–1] motion to Amend [1–1] complaint, reset for 5/3/02 [23–1] motion to Certify Class signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 04/24/2002)
05/02/2002	28	STIPULATION regarding Plaintiff's Motion to Amend &Motion to Extend Time until 5/24/02 to respond to Plaintiff's Motion for Class Certification by CIGNA Corp, CIGNA Pension Plan (Part 1 of 2) (Gothers, M.) (Entered: 05/03/2002)
05/02/2002	28	Stipulation &MOTION by CIGNA Corp, CIGNA Pension Plan to Extend Time until

		5/24/02 to respond to Motion for Class Certification (Part 2 of 2) (Gothers, M.) (Entered: 05/03/2002)
05/09/2002		ENDORSEMENT granting [28–1] motion to Extend Time until 5/24/02 to respond to Motion for Class Certification, granting [28–1] stipulation, Brief Deadline reset for 5/24/02 [23–1] motion to Certify Class (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 05/09/2002)
05/21/2002	29	MOTION by Janice C. Amara, CIGNA Corp, CIGNA Pension Plan to ExtendTime unitl 6/7/02 to respond to Motion for Class Certification (Falcone, K.) (Entered: 05/22/2002)
05/31/2002		ENDORSEMENT granting [29–1] motion to Extend Time unitl 6/7/02 to respond to Motion for Class Certification, Brief Deadline reset for 6/7/02 [23–1] motion to Certify Class (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 05/31/2002)
06/10/2002	30	MEMORANDUM by CIGNA Corp, CIGNA Pension Plan in opposition to [23–1] motion to Certify Class by Janice C. Amara (Gothers, M.) (Entered:

		06/11/2002)
06/12/2002		ENDORSEMENT denying as moot [32–1] motion to Extend Time for 60 days to move for class certification (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 06/13/2002)
06/12/2002		ENDORSEMENT granting [25–1] motion to Amend [1–1] complaint (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 06/13/2002)
06/12/2002	33	AMENDED COMPLAINT by Janice C. Amara amending [1–1] complaint (Gothers, M.) (Entered: 06/13/2002)
06/14/2002	34	MOTION by Janice C. Amara to Extend Time until 7/22/02 to reply to memorandum re: Motion for Class Certification (Gothers, M.) (Entered: 06/17/2002)
06/19/2002		ENDORSEMENT granting [34–1] motion to Extend Time until 7/22/02 to reply to memorandum re: Motion for Class Certification, Brief Deadline reset for 7/22/02 [23–1] motion to Certify Class (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 06/19/2002)
07/01/2002	35	AFFIDAVIT of Christopher A. Parlo by CIGNA Corp, CIGNA

		Pension Plan Re[23–1] motion to Certify Class by Janice C. Amara (Gothers, M.) (Entered: 07/01/2002)
07/18/2002	36	MOTION by CIGNA Corp, CIGNA Pension Plan for Order to Supplement the Record on Motion for Class Certification (Brief Due 8/8/02) (Gothers, M.)(Entered: 07/19/2002)
07/19/2002	37	MOTION by Janice C. Amara to Extend Time for 30 days to disclose experts (Gothers, M.) (Entered: 07/19/2002)
07/22/2002		ENDORSEMENT granting in part [37–1] motion to Extend Time for 30 days to disclose experts (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 07/24/2002)
07/22/2002	38	REPLY by Janice C. Amara to response to [23–1] motion to Certify Class (Gothers, M.) (Entered: 07/24/2002)
07/26/2002	39	RESPONSE by CIGNA Corp, CIGNA Pension Plan to [37–1] motion to Extend Time for 30 days to disclose experts by Janice C. Amara (Gothers, M.) (Entered: 07/26/2002)
07/29/2002	40	ORDER, set Dismissal due by 8/5/02 (signed by Judge Dominic

		J. Squatrito) (Gothers, M.) (Entered: 07/30/2002)
08/05/2002		Status Conference set for 3:00 8/23/02 (DJS) (Glynn, T.) (Entered: 08/05/2002)
08/05/2002	41	MOTION by CIGNA Corp, CIGNA Pension Plan for Leave to File surreply re: motion to certify class (Bauer, J.) (Entered: 08/05/2002)
08/08/2002		ENDORSEMENT granting [41–1] motion for Leave to File surreply re: motion to certify class (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 08/09/2002)
08/08/2002	42	Surreply in Opposition by CIGNA Corp to response to [23–1] motion to Certify Class by Janice C. Amara (Gothers, M.) (Entered: 08/09/2002)
08/12/2002	43	ANSWER/Affirmative Defenses to Complaint by CIGNA Corp, CIGNA Pension Plan (Gothers, M.) (Entered: 08/12/2002)
08/20/2002	44	MOTION by CIGNA Corp, CIGNA Pension Plan to Compel answer interrogatories &produce documents (Brief Due 9/10/02) (Gothers, M.) (Entered: 08/20/2002)
08/20/2002	45	MEMORANDUM by CIGNA Corp, CIGNA Pension Plan in

		support of [44–1] motion to Compel answer interrogatories &produce documents (Gothers, M.) (Entered: 08/20/2002)
08/20/2002	46	AFFIDAVIT of Christopher A. Parlo by CIGNA Corp, CIGNA Pension Plan Re [44–1] motion to Compel answer interrogatories &produce documents (Gothers, M.) (Entered: 08/20/2002)
08/23/2002		Status Conference cancelled (DJS) (Glynn, T.) (Entered: 08/28/2002)
08/29/2002		Status Conference set for 1:00 9/10/02 (DJS) (Glynn, T.) (Entered: 08/29/2002)
09/10/2002	47	Status Conference held (DJS) (Glynn, T.) (Entered: 09/12/2002)
10/02/2002	48	MOTION by CIGNA Corp, CIGNA Pension Plan for Jeremy P. Blumenfeld to Appear Pro Hac Vice (Gothers, M.) (Entered: 10/03/2002)
10/09/2002		ENDORSEMENT denying without prejudice [48–1] motion for Jeremy P. Blumenfeld to Appear Pro Hac Vice (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 10/09/2002)
10/16/2002	49	Stipulation &Joint MOTION by Janice C. Amara, CIGNA Corp, CIGNA Pension Plan to Extend Time until 11/18/02 re: discovery

		(Gothers, M.) (Entered: 10/16/2002)
10/17/2002		ENDORSEMENT granting in part [49–1] motion to Extend Time until 11/18/02 re: discovery, reset Discovery deadline to 12/6/02 , reset Dispositive Motions due by 1/6/03 , reset Filing of Trial Memorandum due by 1/24/03 Trial ready February, 2003 (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 10/17/2002)
10/17/2002	50	MOTION by CIGNA Corp, CIGNA Pension Plan for Jeremy P. Blumenfled to Appear Pro Hac Vice (Gothers, M.) (Entered: 10/17/2002)
10/21/2002		ENDORSEMENT granting [50–1] motion for Jeremy P. Blumenfled to Appear Pro Hac Vice (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 10/21/2002)
11/01/2002	51	APPEARANCE of Attorney for CIGNA Corp, CIGNA Pension Plan -- Jeremy P. Blumenfeld (Gothers, M.) (Entered: 11/01/2002)
11/04/2002	52	MOTION by CIGNA Corp, CIGNA Pension Plan for Jospeh J. Costello to Appear Pro Hac Vice (Gothers, M.) (Entered:

		11/04/2002)
11/06/2002		ENDORSEMENT granting [52–1] motion for Jospeh J. Costello to Appear Pro Hac Vice (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 11/06/2002)
11/13/2002	53	MOTION by Janice C. Amara to Compel discovery compliance (Brief Due 12/4/02) (Gothers, M.) (Entered: 11/13/2002)
11/13/2002	54	MEMORANDUM by Janice C. Amara in support of [53–1] motion to Compel discovery compliance (Gothers, M.) (Entered: 11/13/2002)
11/13/2002	55	AFFIDAVIT of Thomas G. Moukawsher by Janice C. Amara Re [53–1] motion to Compel discovery compliance by Janice C. Amara (Gothers, M.) (Entered: 11/13/2002)
11/14/2002	56	APPEARANCE of Attorney for CIGNA Corp, CIGNA Pension Plan –– Joseph J. Costello (Gothers, M.) (Entered: 11/14/2002)
11/27/2002	57	STIPULATION and JOINT MOTION by Janice C. Amara, CIGNA Corp, CIGNA Pension Plan to Extend Time by 45 days for discovery, 30 days for dispositive motions &14 days for re-

		sponse to motion to compel (Walker, J.) (Entered: 11/27/2002)
12/09/2002	58	NOTICE of Supplemental Authority re: Motion for Class Certification by CIGNA Corp, CIGNA Pension Plan (Gothers, M.) (Entered: 12/10/2002)
12/10/2002		ENDORSEMENT granting in part [57–1] motion to Extend Time by 45 days for discovery, 30 days for dispositive motions &14 days for response to motion to compel, Brief Deadline reset for 12/16/02 [53–1] motion to Compel discovery compliance (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 12/10/2002)
12/10/2002	59	ORDER, reset Discovery deadline to 3/21/03 , reset Dispositive Motions due by 4/21/03 , reset Filing of Trial Memorandum due by 5/21/03 Trial ready June, 2003 (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 12/10/2002)
12/16/2002	60	MEMORANDUM by CIGNA Corp, CIGNA Pension Plan in opposition to [53–1] motion to Compel discovery compliance by Janice Amara (Gothers, M.) (Entered: 12/17/2002)
12/20/2002	61	MEMORANDUM of Decision

		granting [36-1] motion for Order to Supplement the Record on Motion for Class Certification, granting [23-1] motion to Certify Class (signed by Judge Dominic J. Squatrito) 10 Pages(s) (Gothers, M.) (Entered: 12/23/2002)
12/26/2002	62	MOTION by Janice C. Amara to Extend Time until 1/16/03 to file reply re: Motion to Compel (Gothers, M.) (Entered: 12/26/2002)
12/26/2002	63	Response by Janice C. Amara to [58-1] notice of supplemental authority by CIGNA Pension Plan, CIGNA Corp (Gothers, M.) (Entered: 12/26/2002)
01/15/2003	64	REPLY by Janice C. Amara to response to [53-1] motion to Compel discovery compliance (Gothers, M.) (Entered: 01/15/2003)
01/23/2003	65	MOTION by Janice C. Amara for Jeffrey M. Sklarz to Withdraw as Attorney (Gothers, M.) (Entered: 01/23/2003)
01/24/2003		ENDORSEMENT granting [65-1] motion for Jeffrey M. Sklarz to Withdraw as Attorney (Terminated attorney Jeffrey M. Sklarz for Janice C. Amara) (signed by Judge Dominic J. Squatrito) (Grady, B.) (Entered:

		01/28/2003)
02/11/2003	66	Stipulation &MOTION by Janice C. Amara, CIGNA Corp, CIGNA Pension Plan for Clarification of [20–1] order reset Discovery to 10/18/02 (Gothers, M.) (Entered: 02/11/2003)
02/19/2003	67	MEMORANDUM of Decision granting [53–1] motion to Compel discovery compliance, denying without prejudice [44–1] motion to Compel answer interrogatories &produce documents, reset Discovery deadline to 7/25/03 , reset Dispositive Motions due by 8/29/03 , reset Filing of Trial Memorandum due by 9/19/03 (signed by Judge Dominic J. Squatrito) 5 Pages(s) (Gothers, M.) (Entered: 02/19/2003)
06/19/2003	68	MOTION by Janice C. Amara to Enforce Order Compelling Production &Contest Assertions of Privilege (Gothers, M.) (Entered: 06/19/2003)
06/19/2003	69	MEMORANDUM by Janice C. Amara in support of [68–1] motion to Enforce Order Compelling Production &Contest Assertions of Privilege (Gothers, M.) (Entered: 06/19/2003)
06/19/2003	70	AFFIDAVIT of Thomas G. Moukawsher by Janice C. Amara Re [68–1] motion to Enforce Order

		Compelling Production &Contest Assertions of Privilege (Gothers, M.) (Entered: 06/19/2003)
07/11/2003	71	STIPULATION &Extension of Time until 7/14/03 to Respond to Motion to Enforce Order Compelling Production by Conest Assertions of Privilege CIGNA Corp, CIGNA Pension Plan (Gothers, M.) (Entered: 07/11/2003)
07/15/2003		ENDORSEMENT granting [71–1] stipulation re: Motion to Enforce, Brief Deadline set for 7/21/03 [68–1] motion to Enforce Order Compelling Production &Contest Assertions of Privilege (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 07/16/2003)
07/21/2003	72	MEMORANDUM by CIGNA Corp, CIGNA Pension Plan in opposition to [68–1] motion to Enforce Order Compelling Production &Contest Assertions of Privilege by Janice C. Amara (Gothers, M.) (Entered: 07/22/2003)
07/24/2003	73	MOTION by Janice C. Amara to Extend Time re: Discovery &Dispositive Motion deadlines (Gothers, M.) (Entered: 07/24/2003)
07/24/2003	74	MOTION by Janice C. Amara to

		Extend Time for 30 days for discovery &dispositive motions until after Court has ruled on Motion to Enforce Order Compelling Production &Contest Assetations of Privilege (Gothers, M.) Modified on 07/30/2003 (Entered: 07/24/2003)
07/29/2003		ENDORSEMENT denying as moot [74–1] motion to Extend Time for 30 days for discovery &dispositive motions until after Court has ruled on Motion to Enforce Order Compelling Production &Contest Assetations of Privilege (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 07/30/2003)
08/18/2003		ENDORSEMENT granting [73–1] motion to Extend Time re: Discovery &Dispositive Motion deadlines for 30 days after the Court has set the expiration for production of documents (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 08/19/2003)
08/27/2003	75	ORDER granting in part, denying in part [68–1] motion to Enforce Order Compelling Production &Contest Assertions of Privilege (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 08/27/2003)

09/10/2003		ENDORSEMENT granting [62–1] motion to Extend Time until 1/16/03 to file reply re: Motion to Compel, Brief Deadline reset for 1/16/03 [66–1] motion for Clarification of [20–1] order reset Discovery to 10/18/02 (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 09/10/2003)
09/10/2003		ENDORSEMENT granting [66–1] motion for Clarification of [20–1] order reset Discovery to 10/18/02 (signed by Judge Dominic J. Squatrito) (Gothers, M.) (Entered: 09/10/2003)
10/15/2003	76	ORDER Referring Motion to Enforce Order (doc. # 68). Signed by Judge Dominic J. Squatrito on 10/9/03. (Gothers, M.) (Entered: 10/16/2003)
04/06/2004	77	MOTION for Leave to Supplement their Answer to Assert Additional Defenses by CIGNA Corp, CIGNA Pension Plan. (Gothers, M.) (Entered: 04/07/2004)
04/06/2004	78	Memorandum in Support re 77 MOTION for Leave to Supplement their Answer to Assert Additional defenses filed by CIGNA Corp, CIGNA Pension Plan. (Gothers, M.) (Entered: 04/07/2004)

04/28/2004	79	RESPONSE re 77 MOTION for Leave to File filed by Janice C. Amara. (Gothers, M.) (Entered: 04/29/2004)
05/03/2004	80	ORDER granting 77 Motion for Leave to Supplemental Their Answer to Assert Additional Defenses . Signed by Judge Dominic J. Squatrito on 5/3/04. (Pike, C.) (Entered: 05/03/2004)
05/03/2004	81	Supplemental ANSWER/Affirmative Defenses to Amended Complaint by CIGNA Corp, CIGNA Pension Plan.(Gothers, M.) (Entered: 05/05/2004)
06/07/2004	82	MOTION to Decertify the Class by CIGNA Corp, CIGNA Pension Plan.Responses due by 6/28/2004 (Blue, A.) (Entered: 06/08/2004)
06/07/2004	83	Memorandum in Support re 82 MOTION to Decertify the Class filed by CIGNA Corp, CIGNA Pension Plan. (Attachments: # 1 Continuance of main document)(Blue, A.) (Entered: 06/08/2004)
06/28/2004	84	MOTION for Extension of Time until 7/12/04 to File Response as to 82 MOTION to Decertify the Class by Janice C. Amara. (Gothers, M.) (Entered: 06/28/2004)

06/29/2004	85	ORDER granting 84 Motion for Extension of Time to File Response re 82 MOTION to Decertify the Class. Responses due by 7/12/2004. Signed by Judge Dominic J. Squatrito on 6/29/04. (Pike, C.) (Entered: 06/29/2004)
06/29/2004		Reset Deadlines as to 82 MOTION to Decertify the Class. Responses due by 7/12/2004. (Pike, C.) (Entered: 06/29/2004)
07/12/2004	86	OBJECTION re 82 MOTION to Decertify the Class filed by Janice C. Amara. (Gothers, M.) (Entered: 07/13/2004)
07/12/2004	87	Memorandum in Opposition re 82 MOTION to Decertify the Class filed by Janice C. Amara. (Gothers, M.) (Entered: 07/13/2004)
07/27/2004	88	REPLY MEMORANDUM OF LAW IN SUPPORT OF 82 MOTION to Decertify the Class filed by CIGNA Corp, CIGNA Pension Plan. (Glynn, T.) (Entered: 07/27/2004)
08/04/2004	89	MOTION for Leave to File Surreply Brief in Support of Objection to Defendants' Motion to Decertify Class by Janice C. Amara. (Glynn, T.) (Entered: 08/04/2004)
08/05/2004	90	NOTICE OF ELECTRONIC

		ORDER. THIS IS THE ONLY NOTICE THE COURT SHALL ISSUE. ORDER granting 89 Motion for Leave to File Surreply Brief in Support of Objection to Defendants' Motion to Decertify Class. The Clerk shall docket the Plaintiff's Surreply Brief in Support of Objection to Defendants' Motion to Decertify Class dated August 3, 2004. Signed by Judge Dominic J. Squatrito on 8/5/04. (Pike, C.) (Entered: 08/05/2004)
08/05/2004	91	SURREPLY to Response to 82 MOTION to Decertify the Class filed by Janice C. Amara. (Gothers, M.) (Entered: 08/05/2004)
10/13/2004	92	MEMORANDUM OF DECISION denying 82 Motion to de-certify class . Signed by Judge Dominic J. Squatrito on 10/13/04. (5 pages) (Gothers, M.) (Entered: 10/14/2004)
01/04/2005	93	ORDER OF TRANSFER. Judge Dominic J. Squatrito recused. Case reassigned to Judge Mark R. Kravitz for all further proceedings. Signed by Judge Dominic J. Squatrito on 1/4/05. (Bauer, J.) (Entered: 01/05/2005)
01/27/2005	94	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Tele-

		phonic Status Conference set for 2/8/2005 10:00 AM before Judge Mark R. Kravitz. Plaintiff's attorney will initiate the telephone conference call. After all of the parties are on the conference call, they should then call chambers at (203) 773–2022 on the above date and time. (Carotenuto, R.) (Entered: 01/27/2005)
02/08/2005	95	NOTICE OF E–FILED ORDER. THIS IS THE ONLY NOTICE THE COURT WILL ISSUE. The parties having conferred by telephone conference on February 8, 2005, the Court orders that on or before February 25, 2005, the parties shall file a joint status report that includes: (a) a proposal for how the Court should proceed in resolving the parties' discovery dispute; (b) a proposed schedule for the remainder of the case; and (c) the parties' position on whether they would like a referral to Magistrate Judge Garfinkel for the purpose of settlement. Signed by Judge Mark R. Kravitz on 2/8/2005. (Carotenuto, R.) (Entered: 02/08/2005)
02/08/2005		Set Deadlines: Status Report due by 2/25/2005. (Ghilardi, K.) (Entered: 02/09/2005)
02/08/2005	96	Minute Entry for proceedings held before Judge Mark R.

		Kravitz : Telephone Status Conference held on 2/8/2005. (Ghilardi, K.) (Entered: 02/24/2005)
02/25/2005	97	MOTION for Extension of Time until 3/4/05 TO FILE STATUS REPORT by Janice C. Amara. (Depino, F.) (Entered: 02/25/2005)
03/03/2005	98	NOTICE OF E-FILED ORDER: THIS IS THE ONLY NOTICE THE COURT WILL ISSUE. ORDER granting 97 Motion for Extension of Time. Parties shall file their joint status report no later than March 4, 2005. Signed by Judge Mark R. Kravitz on 3/3/2005. (Carotenuto, R.) (Entered: 03/03/2005)
03/03/2005		Set Deadlines: Status Report due by 3/4/2005. (Ghilardi, K.) (Entered: 03/04/2005)
03/04/2005	99	JOINT STATUS REPORT by Janice C. Amara, CIGNA Corp, CIGNA Pension Plan. (Depino, F.) (Entered: 03/07/2005)
03/22/2005	100	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephonic Conference set for 3/24/2005 at 04:00 PM before Judge Mark R. Kravitz to discuss resolution of discovery dis-

		pute. Plaintiff's attorney will initiate the telephone conference call. After all of the parties are on the conference call, they should then call chambers at (203) 773–2022 on the above date and time. (Carotenuto, R.) (Entered: 03/22/2005)
03/22/2005	101	SCHEDULING ORDER: Amended Pleadings due by 5/2/2005. Discovery due by 6/30/2005. Trial Ready Date 10/31/2005. Trial Brief due by 9/15/2005.. Signed by Judge Mark R. Kravitz on 3/21/05. (Depino, F.) (Entered: 03/22/2005)
03/24/2005	103	Minute Entry for proceedings held before Judge Mark R. Kravitz : Telephone Status Conference held on 3/24/2005. (Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 03/31/2005)
03/28/2005	102	SCHEDULING ORDER: simultaneous briefs on the privilege and waivers issues by 4/13/05 and a hearing on such will take place on 4/20/05 @ 1:00p.m. in courtroom 4. Signed by Judge Mark R. Kravitz on 3/24/05. (Depino, F.) (Entered:03/28/2005)
04/13/2005	104	MEMORANDUM of Law in advance of the april 20 2005 conference regarding the parties discovery dispute filed by

		CIGNA Corp, CIGNA Pension Plan. (Depino, F.) (Entered: 04/14/2005)
04/13/2005	105	MEMORANDUM on Privilege and Waiver Issues filed by Janice C. Amara. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)(Depino, F.) (Entered: 04/14/2005)
04/20/2005	106	Minute Entry for proceedings held before Judge Mark R. Kravitz : Miscellaneous Hearing held on 4/20/2005. (Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 04/20/2005)
04/21/2005	107	RULING AND ORDER Status Report due by 6/1/2005.. Signed by Judge Mark R. Kravitz on 4/21/05. (Depino, F.) (Entered: 04/21/2005)
04/25/2005	108	NOTICE of Appearance by Elizabeth A. Fowler on behalf of CIGNA Corp, CIGNA Pension Plan (Depino, F.) (Entered: 04/26/2005)
05/02/2005	109	MOTION for Extension of Time until 5/6/2005 to file motion for leave to amend and any motion in limine by Janice C. Amara. (Falcone, K.) (Entered: 05/04/2005)

05/05/2005	110	NOTICE OF E–FILED ORDER: THIS IS THE ONLY NOTICE THE COURT WILL ISSUE. ORDER granting 109 Motion for Extension of Time. The following documents shall be filed on or before May 6, 2005: any motion for leave to amend the complaint and any motion to add additional named representatives; any motions in limine about the relevance of direct testimony to "likely prejudice" under Burke v. Kodak Ret. Inc. Plan, 336 F.3d 103, 113–14 (2d Cir. 2003); a stipulation or memoranda of law regarding the impact of the Third Circuit's recent decision in Depenbrock v. CIGNA, 389 F.3d 78 (3d Cir. 2004). Signed by Judge Mark R. Kravitz on 5/5/2005. (Carotenuto, R.) (Entered: 05/05/2005)
05/06/2005	111	RESPONSE *Memorandum of Law Regarding the Depenbrock v. Cigna Decision* filed by CIGNA Corp, CIGNA Pension Plan. (Attachments: # 1 Exhibit A)(Fowler, Elizabeth) (Entered: 05/06/2005)
05/06/2005	112	MOTION for Leave to Amend 1 Complaint by Janice C. Amara.Responses due by 5/27/2005 (Attachments: # 1 Amended Complaint)(Rodko, B.)

		(Entered: 05/10/2005)
05/06/2005	113	MEMORANDUM OF LAW on Impact of Third Circuit Decision in Depenbrock v. Cigna on this Litigation filed by Janice C. Amara. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3)(Rodko, B.) (Entered: 05/10/2005)
05/06/2005	114	MOTION in Limine on direct testimony relevant to likely prejudice standard in Burke v. KodakResponses due by 5/27/2005 (Rodko, B.) (Entered: 05/10/2005)
05/06/2005	115	Memorandum in Support re 114 MOTION in Limine on direct testimony relevant to likely prejudice standard in Burke v. Kodak filed by Janice C. Amara. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5# 6 Exhibit 6# 7 Exhibit 8# 8 Exhibit 9# 9 Exhibit 10# 10 Exhibit 11# 11 Exhibit 12# 12 Exhibit 13# 13 Exhibit 14# 14 Exhibit 15) (Exhibit 7 in PAPER FORM)(Rodko, B.) (Entered: 05/10/2005)
05/06/2005	116	Memorandum in Support re 112 MOTION to Correct 1 Complaint filed by Janice C. Amara. (Attachments: # 1 Exhibit 2# 2 Exhibit 3# 3 Exhibit 4) (Exhibit 1

		in PAPER FORM)(Rodko, B.) (Entered: 05/10/2005)
05/31/2005	117	Memorandum in Opposition to 112 MOTION to Amend 1 Complaint filed by CIGNA Corp, CIGNA Pension Plan. (Brown, S.) (Entered: 06/01/2005)
05/31/2005	118	MOTION for 2 Week Extension of Time to 6/14/05 to File Response to 114 MOTION in Limine on Direct Testimony Relevant to the "Likely Prejudice" Standard by CIGNA Corp, CIGNA Pension Plan. (Brown, S.) (Entered: 06/01/2005)
06/01/2005	120	Joint STATUS REPORT by Janice C. Amara. (Brown, S.) (Entered: 06/03/2005)
06/02/2005	119	ORDER granting 118 Motion for Extension of Time to 6/14/05 to File Response to 114 MOTION in Limine Responses due by 6/14/2005. Signed by Judge Mark R. Kravitz on 6/2/05. (Brown, S.) (Entered: 06/03/2005)
06/14/2005	121	MOTION for Leave to File Reply Brief in excess of 10 pages by Janice C. Amara. (Ghilardi, K.) (Entered: 06/16/2005)
06/14/2005	122	RESPONSE re 114 MOTION in Limine filed by CIGNA Corp, CIGNA Pension Plan. (Brown,

		S.) (Entered: 06/16/2005)
06/20/2005	125	Minute Entry for proceedings held before Judge Mark R. Kravitz : Telephone Status Conference held on 6/20/2005. (Ghilardi, K.) (Entered: 06/23/2005)
06/21/2005	123	Ruling granting in part 112 Motion to Amend Complaint, granting 121 Motion for Leave to File Brief in Excess Pages. Signed by Judge Mark R. Kravitz on 6/21/05. (Brown, S.) (Entered: 06/21/2005)
06/21/2005	124	Reply Memorandum to RESPONSE to 112 MOTION to Amend 1 Complaint filed by Janice C. Amara. (Attachments: # 1 Exhibit# 2 Exhibit6# 3 exhibit7# 4 Exhibit8# 5 Exhibit9)(Brown, S.) (Entered: 06/21/2005)
06/21/2005	156	Second AMENDED COMPLAINT against CIGNA Corp, CIGNA Pension Plan, filed by Janice C. Amara.(Brown, S.) (Entered: 01/10/2006)
06/28/2005	126	MOTION for Extension of Time to File Reply as to 114 MOTION in Limine until July 1, 2005 by Janice C. Amara. (Ghilardi, K.) (Entered: 06/28/2005)
06/30/2005	127	NOTICE OF E-FILED ORDER:

		THIS IS THE ONLY NOTICE THE COURT WILL ISSUE. ORDER granting 126 Motion for Extension of Time to File Reply re 114 MOTION in Limine. Plaintiff shall file her reply memorandum in support of her motion in limine no later than July 1, 2005. Signed by Judge Mark R. Kravitz on 6/30/2005. (Carotenuto, R.) (Entered: 06/30/2005)
07/01/2005		Set Deadlines as to 114 MOTION in Limine.Responses due by 7/1/2005. Signed by Judge Mark R. Kravitz on 6/30/05. (Ghilardi, K.) (Entered: 07/01/2005)
07/01/2005	128	MOTION for Leave to File Brief in Excess of 10 Pages by Janice C. Amara. (Brown, S.) (Entered: 07/01/2005)
07/05/2005	129	NOTICE OF E-FILED ORDER: THIS IS THE ONLY NOTICE THE COURT WILL ISSUE. ORDER granting 128 Motion for Leave to File Excess Pages. The Clerk is directed to docket Plaintiff Class' Reply Memorandum In Support Of Motion In Limine On Direct Testimony dated July 1, 2005 attached as Exhibit A to Plaintiff's Motion. Signed by Judge Mark R. Kravitz on 7/5/2005. (Carotenuto, R.) (En-

		tered: 07/05/2005)
07/05/2005	130	REPLY to Response to 114 MOTION in Limine on Direct Testimony Releveant to "Likely Prejudice" Standard filed by Janice C. Amara. (Brown, S.) (Entered: 07/06/2005)
07/12/2005	131	NOTICE of Appearance by Bradford S. Babbitt on behalf of CIGNA Corp, CIGNA Pension Plan (Ghilardi, K.) (Entered: 07/13/2005)
07/12/2005	132	MOTION for Leave to File Surreply Memorandum of Law by CIGNA Corp, CIGNA Pension Plan. (Ghilardi, K.) (Entered: 07/13/2005)
07/13/2005	133	Plaintiff REPORT of Rule 26(f) Planning Meeting. (Ghilardi, K.) (Entered: 07/14/2005)
07/13/2005	134	Proposed Case Management Schedule (Brown, S.) Additional attachment(s) added on 7/14/2005 (Brown, S.). (Entered: 07/14/2005)
07/14/2005	135	Docket Entry Correction re 134 Proposed Case Management Schedule; modified to reflect added pdf (electronic document) (Brown, S.) (Entered: 07/14/2005)
07/18/2005	136	NOTICE OF E-FILED ORDER: THIS IS THE ONLY NOTICE

		THE COURT WILL ISSUE. ORDER granting 132 Motion for Leave to File Surreply. The Clerk is directed to docket Surreply Memorandum Of Law In Response To Plaintiff's Motion In Limine On Direct Testimony Relevant To The "Likely Prejudice" Standard In Burke v. Kodak, dated July 12, 2005. Signed by Judge Mark R. Kravitz on 7/18/2005. (Carotenuto, R.) (Entered: 07/18/2005)
07/18/2002	137	ORDER: Telephonic Conference set for 8/9/2005 08:15 AM; Responses to opponent's 26f proposals due 8/3/05. Signed by Judge Mark R. Kravitz on 7/18/05. (Brown, S.) (Entered: 07/18/2005)
07/18/2005	138	Surreply re 114 MOTION in Limine Relevant to "Likely Prejudice" filed by CIGNA Corp, CIGNA Pension Plan. (Brown, S.) (Entered: 07/26/2005)
08/03/2005	139	RESPONSE to 134 Proposed Case Management Schedule filed by Janice C. Amara. (Inferrera, L.) (Entered: 08/03/2005)
08/04/2005	140	RESPONSE re 134 Report of Rule 26(f) Planning Meeting filed by CIGNA Corp, CIGNA Pension Plan. (Torday, B.) (Entered: 08/04/2005)

08/10/2005	141	Minute Entry for proceedings held before Judge Mark R. Kravitz : Telephone Status Conference held on 8/10/2005. (Ghilardi, K.) (Entered: 08/10/2005)
08/11/2005	142	SCHEDULING ORDER: Discovery due by 2/28/2006. Dispositive Motions due by 3/15/2006. Trial Brief due by 4/15/2006. Bench Trial set for 6/12/2006 09:00 AM in Courtroom Four, 141 Church Street, New Haven, CT before Judge Mark R. Kravitz. Signed by Judge Mark R. Kravitz on 8/11/05. (Pesta, J.) (Entered: 08/12/2005)
08/11/2005		Answer deadline to Second Amended Class Complaint updated for CIGNA Corp to 10/1/2005; CIGNA Pension Plan to 10/1/2005. (Pesta, J.) (Entered: 08/12/2005)
08/31/2005	143	MOTION for Elizabeth Fowler to Withdraw as Attorney by CIGNA Corp, CIGNA Pension Plan. (Brown, S.) (Entered: 09/02/2005)
09/16/2005	144	NOTICE OF E-FILED ORDER: THIS IS THE ONLY NOTICE THE COURT WILL ISSUE. ORDER granting 143 Motion to Withdraw as Attorney. The appearance of Attorney Elizabeth

		A. Fowler on behalf of defendants is terminated. Defendants have alternate continuing legal representation. Signed by Judge Mark R. Kravitz on 9/16/2005. (Carotenuto, R.) (Entered: 09/16/2005)
10/04/2005	145	ANSWER to 156 Amended Complaint with Defenses by CIGNA Corp, CIGNA Pension Plan.(Brown, S.) Modified on 1/10/2006 to create link (Brown, S.). (Entered: 10/05/2005)
10/28/2005	146	MOTION for Electronic Filing Designation by CIGNA Corp, CIGNA Pension Plan. (Brown, S.) (Entered: 10/31/2005)
10/31/2005	147	MOTION for Jamie M. Kohen to Appear Pro Hac Vice. Filing Fee $25.00. Receipt Number N016878. by CIGNA Corp, CIGNA Pension Plan. (Attachments: # 1 Affidavit# 2 Affidavit# 3 Affidavit)(Brown, S.) (Entered: 11/03/2005)
11/03/2005	148	ORDER; Ordered Accordingly 147 Motion Jamie M. Kohen to Appear Pro Hac Vice . Signed by Clerk on 11/3/05. (Brown, S.) (Entered: 11/03/2005)
11/04/2005	149	NOTICE OF E–FILED ORDER: THIS IS THE ONLY NOTICE THE COURT WILL ISSUE. ORDER granting 146 Motion for

		Electronic Filing Designation. Signed by Judge Mark R. Kravitz on 11/4/2005. (Carotenuto, R.) (Entered: 11/04/2005)
11/04/2005	150	ELECTRONIC FILING ORDER . Signed by Judge Mark R. Kravitz on 11/4/2005. (Ghilardi, K.) (Entered: 11/07/2005)
11/08/2005	151	NOTICE OF E–FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephonic Status Conference set for 11/17/2005 at 01:30 PM before Judge Mark R. Kravitz. Counsel should be prepared to discuss pending motion in limine 114 . Plaintiff's attorney will initiate the telephone conference call. After all of the parties are on the conference call, they should then call chambers at (203) 773–2022 on the above date and time. (Carotenuto, R.) (Entered: 11/08/2005)
11/16/2005	152	NOTICE OF E–FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephonic Status Conference reset for 11/29/2005 at 01:30 PM before Judge Mark R. Kravitz. Plaintiff's attorney will initiate the telephone conference call. After all of the parties are on the

		conference call, they should then call chambers at (203) 773–2022 on the above date and time. The telephonic status conference previously scheduled for 11/17/2005 is canceled. (Carotenuto, R.) (Entered: 11/16/2005)
11/29/2005	153	ORDER denying 114 Motion in Limine . Signed by Judge Mark R. Kravitz on 11/29/05. (Inferrera, L.) (Entered: 11/29/2005)
11/29/2005	154	Minute Entry for proceedings held before Judge Mark R. Kravitz : Telephone Status Conference held on 11/29/2005. 20 minutes (Ghilardi, K.) (Entered: 12/02/2005)
01/09/2006	155	MOTION for Leave to File *Third 156 Amended Complaint to Add Additional Named Representative* by Gisela R Broderick, Janice C. Amara. (Attachments: # 1 Memorandum in Support # 2 Proposed Amended Complaint# 3 Certificate of Service)(Bruce, Stephen) Modified on 1/10/2006 to create link (Brown, S.). (Entered: 01/09/2006)
01/09/2006		Set Deadline to 155 MOTION for Leave to File *Third 156 Amended Complaint to Add Additional Named Representative*. Responses due by 1/30/2006 (Brown, S.) (Entered:

		01/10/2006)
01/30/2006	157	RESPONSE re 155 MOTION for Leave to File *Third Amended Complaint to Add Additional Named Representative* filed by CIGNA Corp, CIGNA Pension Plan. (Attachments: # 1 Exhibit Exhibit A)(Choquette, Erin) (Entered: 01/30/2006)
02/02/2006	158	MOTION to Compel *Responses to Discovery and for Sanctions* by Janice C. Amara, Gisela R Broderick.Responses due by 2/23/2006 (Attachments: # 1 Certificate of Service,# 2 Memorandum in Support # 3 Exhibit A,# 4 Exhibit B,# 5 Exhibit C,# 6 Exhibit D,# 7 Exhibit E,# 8 Exhibit F,)(Bruce, Stephen) (Entered: 02/02/2006)
02/02/2006	159	*EXHIBIT G – T* by Janice C. Amara, Gisela R Broderick re 158 MOTION to Compel *Responses to Discovery and for Sanctions*. (Attachments: # 1 Exhibit G,# 2 Exhibit H,# 3 Exhibit I,# 4 Exhibit J,# 5 Exhibit K,# 6 Exhibit L,# 7 Exhibit M,# 8 Exhibit N,# 9 Exhibit O,# 10 Exhibit P,# 11 Exhibit Q,# 12 Exhibit R,# 13 Exhibit S,# 14 Exhibit T)(Bruce, Stephen) (Entered: 02/02/2006)
02/02/2006	161	MOTION for Sanctions by Janice

		C. Amara, Gisela R Broderick.Responses due by 2/23/2006 (Attachments: # 1 Certificate of Service# 2 ExhibitA# 3 ExhibitB# 4 ExhibitC# 5 ExhbitD# 6 ExhibitC# 7 ExhibitF# 8 ExhibitG# 9 ExhibitGG# 10 ExhibitH# 11 ExhibitI# 12 ExhibitJ# 13 ExhibitL# 14 ExhibitM# 15 ExhibitO# 16 ExhibitP# 17 ExhibitQ# 18 ExhibitR)(Brown, S.) (Entered: 02/03/2006)
02/02/2006	162	Memorandum in Support of 161 MOTION for Sanctions filed by Janice C. Amara, Gisela R Broderick. (Attachments: # 1 ExhibitN# 2 ExhibitS# 3 ExhibitT)(Brown, S.) (Entered: 02/03/2006)
02/03/2006	160	NOTICE OF E–FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephonic Status Conference set for 2/14/2006 at 01:30 PM before Judge Mark R. Kravitz. Plaintiff's attorney will initiate the telephone conference call. After all of the parties are on the conference call, they should then call chambers at (203) 773–2022 on the above date and time. Counsel are ordered by the court to be prepared to discuss all

		pending motions.(Carotenuto, R.) (Entered: 02/03/2006)
02/15/2006	163	Minute Entry for proceedings held before Judge Mark R. Kravitz : Telephone Status Conference held on 2/15/2006. 1 hour(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 02/15/2006)
02/15/2006	164	NOTICE OF E–FILED ORDER: THIS IS THE ONLY NOTICE THE COURT WILL ISSUE. In accordance with an on–the–record telephonic conference with the parties on February 14, 2006 and for the reasons stated during that conference, the Court enters the following orders: (1) 158 , 161 Plaintiff Class' Motions to Compel Responses to Discovery and For Sanctions are denied without prejudice to renewal; (2) 155 Plaintiffs' Motion for Leave to Amend Complaint to Add Additional Named Representative is granted. Plaintiffs shall add Ms. Annette S. Glanz and Ms. Gisela R. Broderick as named plaintiffs and class representatives. Plaintiffs are directed to e–file the Third Amended Class Action Complaint For Declaratory And Injunctive Relief Under ERISA, dated January 9, 2006, no later

		than 2/24/2006. Signed by Judge Mark R. Kravitz on 2/15/2006. (Carotenuto, R.) (Entered: 02/15/2006)
02/15/2006		Set Deadlines: Amended Pleadings due by 2/24/2006. (Ghilardi, K.) (Entered: 02/16/2006)
02/17/2006	165	AMENDED COMPLAINT *pursuant to 2/15/2006 Order on Motion for Leave to File* (dkt # 164) against all defendants, filed by Annette S Glanz, Janice C. Amara, Gisela R Broderick.(Bruce, Stephen) (Entered: 02/17/2006)
03/06/2006	166	ANSWER to Amended Complaint with Affirmative Defenses *(Answer to Third Amended Class Action Complaint)* by CIGNA Corp, CIGNA Pension Plan.(Kohen, Jamie) (Entered: 03/06/2006)
03/10/2006	167	Joint STIPULATION *on conduct of discovery and trial* by CIGNA Corp, CIGNA Pension Plan. (Kohen, Jamie) (Entered: 03/10/2006)
03/21/2006	168	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephonic Conference set for 3/28/2006 at 08:30 AM before Judge Mark R. Kravitz. Plain-

		tiff's attorney will initiate the telephone conference call. After all of the parties are on the conference call, they should then call chambers at (203) 773–2022 on the above date and time. (Carotenuto, R.) (Entered: 03/21/2006)
03/25/2006	169	Minute Entry for proceedings held before Judge Mark R. Kravitz : Status Conference held on 3/28/2006. 30 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 03/28/2006)
03/28/2006	170	TRIAL SCHEDULING ORDER: Final Telephone Pretrial Conference set for 9/6/2006 03:30 PM before Judge Mark R. Kravitz. Discovery due by 5/15/2006. Trial Brief due by 7/18/2006. Jury Trial set for 9/11/2006 09:00 AM in Courtroom Four, 141 Church Street, New Haven, CT before Judge Mark R. Kravitz. Signed by Judge Mark R. Kravitz on 3/28/06. (Pesta, J.) (Entered: 03/28/2006)
05/25/2006	171	ENTERED IN ERROR: Joint STIPULATION re 170 Scheduling Order, by Janice C. Amara, Gisela R Broderick, Annette S Glanz, CIGNA Corp, CIGNA Pension Plan. (Bruce, Stephen) Modified on 5/26/2006 (Brown,

		S.). (Entered: 05/25/2006)
05/25/2006	172	Joint MOTION for Extension of Scheduling Order Deadlines by Janice C. Amara, Gisela R Broderick, Annette S Glanz, CIGNA Corp, CIGNA Pension Plan. replaces #171 (Brown, S.) (Entered: 05/26/2006)
05/26/2006		Docket Entry Correction re 171 Stipulation; Stipulation terminated and redocketed as #172 (Brown, S.) (Entered: 05/26/2006)
05/26/2006	173	ORDER granting 172 Motion for Extension of Time. Plaintiffs shall file their trial memorandum including their proposed findings of fact and conclusions of law, trial exhibits, and their trial brief, no later than June 6, 2006. Defendants shall file their trial memorandum, including their proposed findings of fact and conclusions of law, all trial exhibits, and their trial brief no later than June 27, 2006. Plaintiffs shall file a reply trial brief no later than July 25, 2006. All other deadlines remain unchanged. Signed by Judge Mark R. Kravitz on 5/26/2006. (Carotenuto, R.) (Entered: 05/26/2006)
05/26/2006		Set Deadlines: Trial Brief due by 7/25/2006. (Ghilardi, K.) (En-

		tered: 05/30/2006)
06/06/2006	174	TRIAL MEMO by Janice C. Amara, Gisela R Broderick, Annette S Glanz Estimated trial time September 11, 2006. (Attachments: # 1 Trial Brief# 2 Notice of Manual Filing# 3 Certificate of Service)(Bruce, Stephen) (Entered: 06/06/2006)
06/06/2006	175	Proposed Findings of Fact and Conclusions of Law by Janice C. Amara, Gisela R Broderick, Annette S Glanz re 174 Trial Memo. (Attachments: # 1 Proposed Conclusions of Law# 2 Certificate of Service)(Bruce, Stephen) (Entered: 06/06/2006)
06/07/2006	176	MOTION for Erin O'Brien Choquette to Withdraw as Attorney by CIGNA Corp, CIGNA Pension Plan. (Choquette, Erin) (Entered: 06/07/2006)
06/08/2006	177	ORDER granting 176 Motion to Withdraw as Attorney. The appearance of Attorney Erin O'Brien Choquette on behalf of Defendants is terminated. Defendants have continuing alternate legal representation. Signed by Judge Mark R. Kravitz on 6/8/2006. (Carotenuto, R.) (Entered: 06/08/2006)
06/27/2006	178	MOTION in Limine *To Exclude The Expert Testimony of Profes-*

		sor Stratman, Memorandum of Law In Support Thereof, and Proposed Order by CIGNA Corp, CIGNA Pension Plan.Responses due by 7/18/2006 (Attachments: # 1 Exhibit A– Stratman Dep. Excerpt# 2 Exhibit B– Stratman Expert Report Excerpt)(Kohen, Jamie) Additional attachment(s) added on 6/29/2006 (Brown, S.). (Entered: 06/27/2006)
06/27/2006	179	RESPONSE re 175 Proposed Findings of Fact and Conclusions of Law *Defendants' Response to Plaintiffs' Proposed Findings of Fact* filed by CIGNA Corp, CIGNA Pension Plan. (Kohen, Jamie) (Entered: 06/27/2006)
06/27/2006	180	TRIAL MEMO by CIGNA Corp, CIGNA Pension Plan Estimated trial time 5 days.. (Attachments: # 1 Exhibit A– Defendants' Proposed Trial Exhibits# 2 Exhibit B– List of Defendants' Responses To Plaintiffs' Proposed Trial Exhibits# 3 Exhibit C– Memorandum Regarding Defendants' Responses to Plaintiffs Propsed Trial Exhibits)(Kohen, Jamie) (Entered: 06/27/2006)
06/27/2006	181	Proposed Findings of Fact and Conclusions of Law by CIGNA Corp, CIGNA Pension Plan. (Attachments: # 1)(Kohen, Jamie)

		(Entered: 06/27/2006)
06/27/2006	182	RESPONSE re 180 Trial Memo, *Defendants' Trial Brief* filed by CIGNA Corp, CIGNA Pension Plan. (Kohen, Jamie) (Entered: 06/27/2006)
06/28/2006	183	RESPONSE re 182 Response *Table of Authorities to Defendants' Trial Brief* filed by CIGNA Corp, CIGNA Pension Plan. (Attachments: # 1 Exhibit Attachment A to Trial Brief)(Kohen, Jamie) (Entered: 06/28/2006)
06/28/2006	184	NOTICE of Appearance by Brett J. Boskiewicz on behalf of CIGNA Corp, CIGNA Pension Plan (Boskiewicz, Brett) (Entered: 06/28/2006)
07/18/2006	185	Memorandum in Opposition re 178 MOTION in Limine *To Exclude The Expert Testimony of Professor Stratman, Memorandum of Law In Support Thereof, and Proposed Order* filed by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Bruce, Stephen) (Entered: 07/18/2006)
07/25/2006	186	RESPONSE re 180 Trial Memo, *Exhibit C, Defendants' Responses to Plaintiffs' Proposed Trial Exhibits* filed by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Bruce, Stephen) (En-

		tered: 07/25/2006)
07/25/2006	187	RESPONSE re 182 Response , *Plaintiffs' Reply Trial Brief* filed by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Bruce, Stephen) (Entered: 07/25/2006)
07/25/2006	188	Proposed Exhibit List *200 – 216* by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Attachments: # 1 Exhibit 200# 2 Exhibit 201# 3 Exhibit 202# 4 Exhibit 203# 5 Exhibit 204# 6 Exhibit 205# 7 Exhibit 206# 8 Exhibit 207# 9 Exhibit 208# 10 Exhibit 209# 11 Exhibit 210# 12 Exhibit 211# 13 Exhibit 212# 14 Exhibit 213# 15 Exhibit 214# 16 Exhibit 215# 17 Exhibit 216)(Bruce, Stephen) (Entered: 07/25/2006)
08/01/2006	189	REPLY to Response to 178 MOTION in Limine *To Exclude The Expert Testimony of Professor Stratman, Memorandum of Law In Support Thereof, and Proposed Order* filed by CIGNA Corp, CIGNA Pension Plan. (Kohen, Jamie) (Entered: 08/01/2006)
08/30/2006	190	MOTION for Leave to File *Supplemental Pre–trial Submission and Certificate of Counsel Conference* by CIGNA Corp, CIGNA

		Pension Plan. (Kohen, Jamie) (Entered: 08/30/2006)
08/30/2006	191	RESPONSE re 188 Exhibit List, filed by CIGNA Corp, CIGNA Pension Plan. (Kohen, Jamie) (Entered: 08/30/2006)
08/30/2006	192	Proposed Findings of Fact and Conclusions of Law by CIGNA Corp, CIGNA Pension Plan. (Attachments: # 1 Supplement)(Kohen, Jamie) (Entered: 08/30/2006)
08/30/2006	193	TRIAL MEMO *Supplemental Trial Brief* by CIGNA Corp, CIGNA Pension Plan Estimated trial time 5 days. (Kohen, Jamie) (Entered: 08/30/2006)
08/30/2006	194	Proposed Exhibit List and *Supplemental Witness List* by CIGNA Corp, CIGNA Pension Plan. (Kohen, Jamie) (Entered: 08/30/2006)
08/31/2006	195	ORDER granting 190 Motion for Leave to File Supplemental Pre–Trial Submission. If plaintiffs wish to file any pleadings in response to these latest filings, the Court will permit plaintiffs to do so. Signed by Judge Mark R. Kravitz on 8/31/2006. (Carotenuto, R.) (Entered: 08/31/2006)
08/31/2006	196	TRIAL MEMO on *Suppl. Authorities and New Evidence* by

		Janice C. Amara, Gisela R Broderick, Annette S Glanz Estimated trial time 5 days. (Bruce, Stephen) (Entered: 08/31/2006)
08/31/2006	197	TRIAL MEMO *Identification List of Witnesses and Key Employees* by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Bruce, Stephen) (Entered: 08/31/2006)
08/31/2006	198	Supplemental Proposed Exhibit List by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Attachments: # 1 Exhibit 217# 2 Exhibit 218 (Part I)# 3 Exhibit 218 (Part II)# 4 Exhibit 219# 5 Exhibit 220# 6 Exhibit 221# 7 Exhibit 222# 8 Exhibit 223# 9 Exhibit 224# 10 Exhibit 225# 11 Exhibit 226)(Bruce, Stephen) (Entered: 08/31/2006)
08/31/2006	199	Second MOTION to Compel by Janice C. Amara, Gisela R Broderick, Annette S Glanz.Responses due by 9/21/2006 (Attachments: # 1 Memorandum in Support # 2 Exhibit 1# 3 Exhibit 2# 4 Exhibit 3# 5 Exhibit 4# 6 Exhibit 5# 7 Exhibit 6# 8 Exhibit 7# 9 Exhibit 8# 10 Exhibit 9# 11 Exhibit 10# 12 Exhibit 11# 13 Exhibit 12# 14 Exhibit 13# 15 Exhibit 14)(Bruce, Stephen) (Entered:

		08/31/2006)
09/06/2006	200	Minute Entry for proceedings held before Judge Mark R. Kravitz : Pretrial Conference held on 9/6/2006. Total Time: 1 hour and 25 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 09/06/2006)
09/11/2006	201	Memorandum in Opposition re 199 Second MOTION to Compel filed by CIGNA Corp, CIGNA Pension Plan. (Attachments: # 1 Errata A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D)(Kohen, Jamie) (Entered: 09/11/2006)
09/11/2006	202	NOTICE by CIGNA Corp, CIGNA Pension Plan Notice: Defendants Proposed List of Class Claims, Issues and Defenses and Individualized Claims Issues and Defenses (Kohen, Jamie) (Entered: 09/11/2006)
09/11/2006	203	Minute Entry for proceedings held before Judge Mark R. Kravitz : Bench Trial held on 9/11/2006. Total Time: 6 hours and 40 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 09/12/2006)
09/12/2006	204	Minute Entry for proceedings held before Judge Mark R. Kravitz : Bench Trial held on 9/12/2006. Continued to 9/13/2006 at 8:30 AM Total

		Time: 3 hours and 03 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 09/12/2006)
09/12/2006	205	TRIAL MEMO *On Relief* by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Bruce, Stephen) (Entered: 09/12/2006)
09/13/2006	206	MOTION for Attorney Allison Caalim to Appear Pro Hac Vice by Janice C. Amara, Gisela R Broderick, Annette S Glanz.. Filing Fee $25.00. Receipt Number N019321. (Attachments: # 1 Declaration)(Brown, S.) Modified on 9/13/2006 (Brown, S.). (Entered: 09/13/2006)
09/13/2006	207	ORDER; Ordered Accordingly 206 Motion for Attorney Allison Caalim to Appear Pro Hac Vice . Signed Clerk on 9/13/06. (Brown, S.) (Entered: 09/13/2006)
09/13/2006		Docket Entry Correction re 206 MOTION for Allison Caalim to Appear Pro Hac Vice. Filing Fee $25.00. Receipt Number N019321; text modified to correct spelling of attorney's name (Brown, S.) (Entered: 09/13/2006)
09/13/2006	208	Minute Entry for proceedings held before Judge Mark R. Kravitz : Bench Trial held on 9/13/2006. Continued to

		9/14/2006 Total Time: 6 hours and 56 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 09/14/2006)
09/14/2006	209	Minute Entry for proceedings held before Judge Mark R. Kravitz : Bench Trial held on 9/14/2006. Continued to 9/15/2006. Total Time: 6 hours and 47 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 09/15/2006)
09/15/2006	210	Minute Entry for proceedings held before Judge Mark R. Kravitz : Bench Trial held on 9/15/2006. Continued to a date to be determined. Total Time: 4 hours and 37 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 09/15/2006)
09/15/2006	211	ORAL MOTION for Judgment as a Matter of Law by CIGNA Corp, CIGNA Pension Plan.Responses due by 10/6/2006 (Ghilardi, K.) (Entered: 09/15/2006)
09/15/2006	212	ORAL ORDER denying 211 Motion for Judgment as a Matter of Law without prejudice to renewal as put on the record in open court. Signed by Judge Mark R. Kravitz on 9/15/2006. (Ghilardi, K.) (Entered: 09/15/2006)
09/15/2006	213	ORDER denying without preju-

		dice 199 Plaintiff Class' Motion For Adverse Inferences and Sanctions Based on Defendants' Responses to Discovery for the reasons stated on the record in open court on 9/15/2006. Signed by Judge Mark R. Kravitz on 9/15/2006. (Carotenuto, R.) (Entered: 09/15/2006)
09/15/2006	214	ORDER denying 178 Motion in Limine. For the reasons stated on the record in open court on September 15, 2006, 178 Motion in Limine is DENIED to the extent it sought to preclude Professor Stratman from testifying. Professor Stratman's report and testimony are admitted subject to Defendants' continuing objection as stated in the Motion in Limine. Signed by Judge Mark R. Kravitz on 9/15/2006. (Carotenuto, R.) (Entered: 09/15/2006)
09/22/2006	215	NOTICE of Appearance by Allison C. Caalim on behalf of all plaintiffs (Caalim, Allison) (Entered: 09/22/2006)
09/22/2006	216	ENTERED IN ERROR: TRIAL MEMO *Plaintiffs' Proposed Order Under Federal Rule 23(c)(1)(B)* by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Bruce, Stephen) Modified on 9/25/2006 (Brown, S.).

		(Entered: 09/22/2006)
09/22/2006	217	PROPOSED ORDER under Federal Rule 23(c)(1)(B) by Janice C. Amara, Gisela R Broderick, Annette S Glanz. Replaces docket entry #216 (Brown, S.) (Entered: 09/25/2006)
10/06/2006	218	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE.ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. Continuation of Bench Trial set from 1/24/2007 to 1/30/2007 at 09:00 AM in Courtroom Four, 141 Church Street, New Haven, CT before Judge Mark R. Kravitz. (Carotenuto, R.) (Entered: 10/06/2006)
12/12/2006	219	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE.ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. A Settlement Conference is scheduled for the above case on 1/10/2007 @ 10:00 a.m. before The Honorable William I. Garfinkel, U.S. District Court, 915 Lafayette Blvd., Courtroom 435, Bridgeport CT 06604.

		PLEASE NOTE THE SETTLEMENT CONFERENCE ORDER ATTACHMENT TO THIS CALENDAR. THANK YOU. (Urbano, G.) (Entered: 12/12/2006)
01/10/2007	220	Minute Entry for proceedings held before Judge William I. Garfinkel: Settlement Conference held on 1/10/2007. Case not settled. Total Time: 4 hours and 0 minutes (Candee, D.) (Entered: 01/11/2007)
01/12/2007	221	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephonic Status Conference set for 1/16/2007 at 03:00 PM before Judge Mark R. Kravitz. Defendants' attorney will initiate the telephone conference call. After all of the parties are on the conference call, they should then call chambers at (203) 773-2022 on the above date and time. (Carotenuto, R.) (Entered: 01/12/2007)
01/12/2007	222	ENTERED IN ERROR: TRIAL MEMO Supplemental Authorities by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Bruce, Stephen) Modified on 1/19/2007 (Brown, S.). (Entered: 01/12/2007)

01/12/2007	224	NOTICE of Supplemental Authoriities by Janice C. Amara, Gisela R Broderick, Annette S Glanz (replaces entry #222) (Brown, S.) (Entered: 01/19/2007)
01/16/2007	223	Minute Entry for proceedings held before Judge Mark R. Kravitz : Telephone Status Conference held on 1/16/2007. 13 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 01/17/2007)
01/24/2007	225	Minute Entry for proceedings held before Judge Mark R. Kravitz : Bench Trial held on 1/24/2007. Total Time: 7 hours and 52 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 01/25/2007)
01/25/2007	227	Minute Entry for proceedings held before Judge Mark R. Kravitz : Bench Trial held on 1/25/2007. Date for Summations / Oral Argument to be determined. Total Time: 7 hours and 01 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 01/26/2007)
01/25/2007	261	Marked Witness List. (Ghilardi, K.) (Entered: 09/24/2007)
01/25/2007	262	Marked Exhibit List by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Ghilardi, K.) (En-

		tered: 09/24/2007)
01/25/2007	263	Marked Exhibit List by CIGNA Corp, CIGNA Pension Plan. (Ghilardi, K.) (Entered: 09/24/2007)
01/26/2007	226	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephonic Status Conference set for 1/30/2007 at 11:00 AM before Judge Mark R. Kravitz. Plaintiff's attorney will initiate the telephone conference call. After all of the parties are on the conference call, they should then call chambers at (203) 773-2022 on the above date and time. (Carotenuto, R.) (Entered: 01/26/2007)
01/30/2007	228	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE.ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. A Follow-up Settlement Conference is scheduled for the above case on 3/14/2007 @ 10:00 AM before The Honorable William I. Garfinkel, U.S. District Court, 915 Lafayette Blvd., Courtroom 437, Bridgeport CT 06604. PLEASE NOTE THE

		PREVIOUS ISSUED SETTLEMENT CONFERENCE ORDER REMAINS IN EFFECT. COUNSEL ARE TO REPORT TO JUDGE GARFINKEL'S CHAMBERS, ROOM 429 PRIOR TO THE CONFERENCE. THANK YOU. (Urbano, G.) (Entered: 01/30/2007)
01/30/2007	230	Minute Entry for proceedings held before Judge Mark R. Kravitz : Telephone Status Conference held on 1/30/2007. 13 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 02/05/2007)
01/31/2007	229	SCHEDULING ORDER:Telephonic Status Conference set for 3/14/2007 09:00 AM., Joint Statement of Class Issues due by 2/16/2007.,Trial Brief and Proposed Findings of Fact due by 3/30/2007.,Closing Arguments set for 6/4/2007 01:30 PM in Courtroom Four, 141 Church Street, New Haven, CT before Judge Mark R. Kravitz.. Signed by Judge Mark R. Kravitz on 1/31/07. (Brown, S.) (Entered: 01/31/2007)
02/16/2007	231	TRIAL MEMO *Proposed Order Under FED. R. CIV. P. 23(c)(1)(B)* by CIGNA Corp, CIGNA Pension Plan Estimated trial time 0 days. (Kohen, Jamie)

		(Entered: 02/16/2007)
02/16/2007	232	TRIAL MEMO / *Statement Regarding Class Issues* by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Attachments: # 1 Text of Proposed Order)(Bruce, Stephen) (Entered: 02/16/2007)
02/19/2007	233	Final Marked Exhibit List by CIGNA Corp, CIGNA Pension Plan. (Kohen, Jamie) (Entered: 02/19/2007)
02/19/2007	234	TRIAL MEMO *Deposition Designations and Plaintiffs' Counter Designations Thereto* by CIGNA Corp, CIGNA Pension Plan. (Kohen, Jamie) (Entered: 02/19/2007)
02/19/2007	235	CERTIFICATE OF SERVICE by CIGNA Corp, CIGNA Pension Plan re 234 Trial Memo, 233 Exhibit List (Kohen, Jamie) (Entered: 02/19/2007)
02/19/2007	236	TRIAL MEMO *Memorandum Of Law In Support Of The Admission Of Portions Of Absent Class Members Deposition Testimony, And In Opposition To The Admission Of Absent Class Members Interrogatory Responses And The Deposition Testimony Of An Available Third–Party Witness* by CIGNA Corp, CIGNA Pension Plan. (Kohen, Jamie)

		(Entered: 02/19/2007)
02/19/2007	237	EXHIBIT *Notice of Manual Filing Regarding "Class List" CD* (Exhibit 238) by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Bruce, Stephen) (Entered: 02/19/2007)
02/19/2007	238	NOTICE by Janice C. Amara, Gisela R Broderick, Annette S Glanz (Attachments: # 1 Final List of Trial Exhibits)(Bruce, Stephen) (Entered: 02/19/2007)
02/19/2007	239	TRIAL MEMO *Regarding Admissibility* by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Attachments: # 1 Exhibit A# 2 Exhibit 239# 3 Exhibit 240# 4 Exhibit 241# 5 Exhibit 242# 6 Exhibit 243# 7 Exhibit 244# 8 Exhibit 245)(Bruce, Stephen) (Entered: 02/19/2007)
03/02/2007	240	ORDER directing Parties to contact chambers by 3/9/07 to schedule additional days of testimony or to report that no additional testimony will be required.. Signed by Judge Mark R. Kravitz on 3/2/07. (Brown, S.) (Entered: 03/02/2007)
03/12/2007	241	ORDER Under Federa Rule 23(c)(1)(B). Signed by Judge Mark R. Kravitz on 3/12/07. (Brown, S.) (Entered:

		03/13/2007)
03/14/2007	242	Minute Entry for proceedings held before Judge Mark R. Kravitz : Telephone Status Conference held on 3/14/2007. 6 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 03/15/2007)
03/14/2007	243	Minute Entry for proceedings held before Judge William I. Garfinkel: Follow–upSettlement Conference held on 3/14/2007. Total Time: 4 hours and 0 minutes (Candee, D.) (Entered: 03/20/2007)
03/21/2007	244	Modified Post–Trial Scheduling ORDER; Closing arguments 8/9/07 @1:30 PM. Signed by Judge Mark R. Kravitz on 3/21/07. (Brown, S.) (Entered: 03/21/2007)
03/21/2007		Set Hearing: Closing Arguments set for 8/9/2007 01:30 PM in Courtroom Four, 141 Church Street, New Haven, CT before Judge Mark R. Kravitz. (Brown, S.) (Entered: 03/21/2007)
04/25/2007	245	Joint MOTION for Extension of 244 Modified Post Trial Scheduling Order by Janice C. Amara, Gisela R Broderick, Annette S Glanz, CIGNA Corp, CIGNA Pension Plan.Responses due by 5/16/2007 (Attachments: # 1 Text

		of Proposed Order)(Bruce, Stephen) Modified on 4/26/2007 to change motion type(Brown, S.). (Entered: 04/25/2007)
04/26/2007	246	Amended Pst–Trial Scheduling ORDER granting 245 Motion for Extension of Scheduling Order Deadlines. Signed by Judge Mark R. Kravitz on 4/26/07. (Brown, S.) (Entered: 04/27/2007)
04/26/2007		Set Hearing: Closing Argument set for 8/9/2007 01:30 PM in Courtroom Four, 141 Church Street, New Haven, CT before Judge Mark R. Kravitz. (Brown, S.) (Entered: 04/27/2007)
05/25/2007	247	TRIAL MEMO by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Bruce, Stephen) (Entered: 05/25/2007)
05/25/2007	248	Proposed Findings of Fact and Conclusions of Law by Janice C. Amara, Gisela R Broderick, Annette S Glanz re 247 Trial Memo. (Bruce, Stephen) (Entered: 05/25/2007)
06/25/2007	249	RESPONSE re 248 Proposed Findings of Fact and Conclusions of Law *Defendants' Responses and Objections to Plaintiffs' Proposed Post–Trial Findings of Fact* filed by CIGNA Corp, CIGNA Pension Plan.

		(Kohen, Jamie) (Entered: 06/25/2007)
06/25/2007	250	Proposed Findings of Fact and Conclusions of Law by CIGNA Corp, CIGNA Pension Plan. (Attachments: # 1 Post–Trial Proposed Conclusions of Law)(Kohen, Jamie) (Entered: 06/25/2007)
06/25/2007	251	TRIAL MEMO *Post–Trial Brief* by CIGNA Corp, CIGNA Pension Plan. (Attachments: # 1 Exhibit A)(Kohen, Jamie) (Entered: 06/25/2007)
06/25/2007	252	CERTIFICATE OF SERVICE by CIGNA Corp, CIGNA Pension Plan re 251 Trial Memo, 249 Response, 250 Proposed Findings of Fact and Conclusions of Law (Kohen, Jamie) (Entered: 06/25/2007)
06/27/2007	253	NOTICE OF E–FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. NOTE NEW DATE: Closing arguments previously set for 8/9/2007 are RESET for 8/23/2007 at 01:30 PM in Courtroom Four, 141 Church Street, New Haven, CT before Judge Mark R. Kravitz. All persons entering the courthouse must present photo identification. (Carotenuto, R.) (En-

		tered: 06/27/2007)
07/26/2007	254	TRIAL MEMO by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Bruce, Stephen) (Entered: 07/26/2007)
08/01/2007	255	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephonic Status Conference set for 8/8/2007 at 10:00 AM before Judge Mark R. Kravitz. Plaintiff's attorney will initiate the telephone conference call. After all of the parties are on the conference call, they should then call chambers at (203) 773-2022 on the above date and time. (Carotenuto, R.) (Entered: 08/01/2007)
08/08/2007	256	TRIAL MEMO *Post-Trial Brief (corrected for numbering of Proposed Findings of Fact, per Leave of Court granted 08-08-07)* by CIGNA Corp, CIGNA Pension Plan Estimated trial time none. (Attachments: # 1 Exhibit A)(Kohen, Jamie) (Entered: 08/08/2007)
08/08/2007	257	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. NOTE CHANGE OF TIME: Closing ar-

		gument set for 8/23/2007 will begin at 12:30 PM in Courtroom Four, 141 Church Street, New Haven, CT before Judge Mark R. Kravitz. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. (Carotenuto, R.) (Entered: 08/08/2007)
08/08/2007	258	Minute Entry for proceedings held before Judge Mark R. Kravitz : Telephone Status Conference held on 8/8/2007. 14 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 08/10/2007)
08/23/2007	259	Minute Entry for proceedings held before Judge Mark R. Kravitz : Summations held. Bench Trial completed on 8/23/2007. Total Time: 4 hours 9 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 08/23/2007)
09/24/2007	260	ORDER. The Court has read and appreciates the arguments of both sides regarding the absence of the CIGNA Plan Administrator as a party to this action. However, the Court also believes that the parties' arguments may be hypothetical, given the possibility of amending the pleadings under Rules 15 and 21 of the Federal Rules of Civil Procedure.

		Under Rule 21, "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." (Emphasis added). The Administrator here clearly had notice of the suit and would have been represented by the same counsel as represented CIGNA. Furthermore, the Court notes that Rule 15 allows for relation back of such amendments where "but for a mistake concerning the identity of the proper party, the action would have been brought against the party." Fed. R. Civ. P. 15(c)(3)(B). Accordingly, the Court orders the parties to file simultaneous briefs no later than October 8, 2007, on whether the Plan Administrator should or could now be added to this action in order to avoid the arguments occasioned by his absence from the case. IT IS SO ORDERED. Signed by Judge Mark R. Kravitz on 9/24/2007. (Carotenuto, R.) (Entered: 09/24/2007)
10/08/2007	264	RESPONSE re 260 Order,,,,,, by CIGNA Corp, CIGNA Pension Plan *Regarding The Addition Of A New Defendant And Notice Of Supplemental Authority.* (Attachments: # 1 Exhibit A – Part

		1# 2 Exhibit A – Part 2)(Kohen, Jamie) (Entered: 10/08/2007)
10/08/2007	265	RESPONSE re 260 Order,,,,, by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Bruce, Stephen) (Entered: 10/08/2007)
01/24/2008	266	NOTICE OF E–FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephonic Conference set for 1/25/2008 at 02:15 PM before Judge Mark R. Kravitz. Plaintiff's attorney will initiate the telephone conference call. After all of the parties are on the conference call, they should then call chambers at (203) 773–2022 on the above date and time. (Carotenuto, R.) (Entered: 01/24/2008)
02/08/2008	267	RESPONSE by CIGNA Corp, CIGNA Pension Plan *to the Court's January 25, 2008 Inquiries.* (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Kohen, Jamie) (Entered: 02/08/2008)
02/08/2008	268	TRIAL MEMO by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Bruce, Stephen) (Entered: 02/08/2008)
02/15/2008	269	Memorandum Decision; Simul-

		taneous briefs regarding class relief and the issue of how to address any remaining claims, including individual claims, due 3/17/08. Signed by Judge Mark R. Kravitz on 2/15/08. 122 pgs(Brown, S.) (Entered: 02/15/2008)
02/25/2008	270	NOTICE OF E–FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. A Telephonic Status Conference is scheduled with Judge Garfinkel on 2/28/2008 @ 01:30 PM Plaintiff counsel shall initiate the conference call. When all who are participating in the call are on the line, please call Judge Garfinkel at 203–579–5593. Thank you. (Urbano, G.) (Entered: 02/25/2008)
02/28/2008	271	NOTICE OF E–FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephonic Conference set for 3/4/2008 at 03:00 PM before Judge Mark R. Kravitz. Defendants' attorney will initiate the telephone conference call. After all of the parties are on the conference call, they should then call chambers at (203) 773–2022 on the above date and time. (Ca-

		rotenuto, R.) (Entered: 02/28/2008)
02/28/2008	272	Minute Entry for Telephonic Status Conference held 15 minutes on February 28, 2008 before Judge William I. Garfinkel: (Urbano, G.) (Entered: 02/28/2008)
02/28/2008		Set Deadlines: Telephone Status Conference set for 3/4/2008 3:00 PM before Judge Mark R. Kravitz (Ghilardi, K.) (Entered: 02/29/2008)
03/04/2008	273	AMENDED BRIEFING SCHEDULE. Plaintiffs will brief remedy and class and individual issues no later than March 17, 2008. Defendants' response will be filed no later than April 16, 2008. Plaintiffs will file their reply brief no later than 5:00 p.m. on April 25, 2008. Oral argument will be held on April 30, 2008, at 2:00 p.m. in Courtroom Four, 141 Church Street, New Haven, Connecticut. Signed by Judge Mark R. Kravitz on 3/4/2008. (Carotenuto, R.) (Entered: 03/04/2008)
03/04/2008	274	Minute Entry for proceedings held before Judge Mark R. Kravitz: Telephone Conference held on 3/4/2008. 8 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered:

		03/05/2008)
03/17/2008	275	TRIAL MEMO *on Relief* by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Attachments: # 1 Exhibit 246, # 2 Exhibit 247, # 3 Exhibit 248, # 4 Exhibit 249, # 5 Text of Proposed Order)(Bruce, Stephen) (Entered: 03/17/2008)
04/16/2008	276	RESPONSE by CIGNA Corp, CIGNA Pension Plan *(Memorandum of Law on Individual Issues and Class Relief)*. (Attachments: # 1 Exhibit A)(Kohen, Jamie) (Entered: 04/16/2008)
04/25/2008	277	TRIAL MEMO *(Reply on Relief)* by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Bruce, Stephen) (Entered: 04/25/2008)
04/30/2008	278	Minute Entry for proceedings held before Judge Mark R. Kravitz: Hearing on Class Relief held on 4/30/2008. Total Time: 2 hours 43 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Ghilardi, K.). (Entered: 05/01/2008)
05/16/2008	279	TRIAL MEMO *Supplemental Brief on Relief* by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Attachments: # 1 Affidavit of Allison Caalim, # 2

		Affidavit of Sharon Taulman)(Bruce, Stephen) (Entered: 05/16/2008)
05/16/2008	280	RESPONSE *to The Court's April 30, 2008 Inquiries* filed by CIGNA Corp, CIGNA Pension Plan. (Kohen, Jamie) (Entered: 05/16/2008)
05/22/2008	281	ORDER. In their supplemental briefing due next Wednesday, May 28, the parties should also discuss whether, if the Court were to grant remedies of the nature requested by Plaintiffs, prejudgment interest would be necessary and/or appropriate. In light of the short notice, the Court will entertain motions for a limited extension of time if necessary. Signed by Judge Mark R. Kravitz on 5/22/08. (Morris, D.) (Entered: 05/22/2008)
05/23/2008	282	ORDER. At the request of the parties, the briefs previously due on Wednesday, May 28, 2008 are now due no later than 5 p.m. on Friday, May 30. Signed by Judge Mark R. Kravitz on 5/23/08. (Morris, D.) (Entered: 05/23/2008)
05/30/2008	283	RESPONSE re 279 Trial Memo by CIGNA Corp, CIGNA Pension Plan *(Reply)*. (Kohen, Jamie)

		(Entered: 05/30/2008)
05/30/2008	284	TRIAL MEMO *re 278 April 30, 2008 Inquiries* by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Attachments: # 1 Affidavit of Allison Caalim)(Bruce, Stephen) Modified on 6/2/2008 to create link(Brown, S.). (Entered: 05/30/2008)
06/13/2008	285	Memorandum of Decision granting declaratory, injunctive, and monetary relief to Plaintiffs. Signed by Judge Mark R. Kravitz on 06/13/08. (Morris, D.) (Entered: 06/13/2008)
06/13/2008	286	JUDGMENT. Signed by Clerk on 6/13/2008. (Ghilardi, K.) (Entered: 06/13/2008)
07/03/2008	287	MOTION for Attorney Fees *Motion to Defer Consideration of Claim for Attorneys' Fees Pending Appeal* by Janice C. Amara, Gisela R Broderick, Annette S Glanz.Responses due by 7/24/2008 (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order)(Bruce, Stephen) (Entered: 07/03/2008)
07/03/2008	288	ORDER: In accordance with the agreement of counsel, as reported during an on–the–record telephonic conference on July 3, 2008, the Court vacates its order

		285 requiring CIGNA to post a bond no later than July 11, 2008. The parties will file simultaneous briefs on the appropriate amount of such a bond no later than July 11, 2008 and will file simultaneous reply briefs no later than July 18, 2008. CIGNA will post a bond within fourteen days of the Court's decision on the appropriate amount of such a bond. Signed by Judge Mark R. Kravitz on 7/3/2008. (Ghilardi, K.) (Entered: 07/03/2008)
07/03/2008	290	Minute Entry for proceedings held before Judge Mark R. Kravitz: Telephone Conference held on 7/3/2008. 2 minutes(Court Reporter Finkelstein.) (Ghilardi, K.) (Entered: 07/08/2008)
07/07/2008	289	NOTICE OF APPEAL as to 286 Judgment by Janice C. Amara, Gisela R Broderick, Annette S Glanz. Filing fee $ 455, receipt number NO24977. (Falcone, K.) (Entered: 07/08/2008)
07/08/2008	291	ORDER. With the consent of defendants and for good cause shown, the Court grants 287 Plaintiffs' Motion to Defer Consideration of Claim For Attorneys' Fees Pending Appeal. Plaintiffs motion for attorneys fees shall be deferred until 30

		days following the issuance of the Mandate from the United States Court of Appeals for the Second Circuit following CIGNA's appeal. Signed by Judge Mark R. Kravitz on 7/8/2008. (Carotenuto, R.) (Entered: 07/08/2008)
07/09/2008	292	AMENDED ORDER 291 . With the consent of defendants and for good cause shown, the Court grants 287 Plaintiffs' Motion to Defer Consideration of Claim For Attorneys' Fees Pending Appeal. Plaintiffs motion for attorneys fees shall be deferred until 30 days following the issuance of the Mandate from the United States Courts of Appeals for the Second Circuit following the parties' appeal. Signed by Judge Mark R. Kravitz on 7/9/2008. (Carotenuto, R.) (Entered: 07/09/2008)
07/10/2008	297	NOTICE OF APPEAL with manually filed attachments as to 269 Memorandum Decision re Briefs on Class Relief, 61 Memorandum Decision granting 23 Motion to Certify Putative Class, 92 Memorandum Decision denying 82 Motion to De–Certify Class, 241 Order Under FR 23(c)(1)(B), 286 Judgment, 285 Memorandum of Decision grant-

		ing Declaratory, Injunctive and Monetary Relief by CIGNA Corp, CIGNA Pension Plan. Filing fee $ 455, receipt number N025039. (Brown, S.) Modified on 10/7/2008 to include text " with manually filed attachments" (Brown, S.). (Entered: 07/14/2008)
07/11/2008	293	ENTERED IN ERROR: MOTION for Bond *Memorandum of Law On the Appropriate Bond Amount* by CIGNA Corp, CIGNA Pension Plan. (Attachments:# 1 Exhibit A– Henderson Declaration, # 2 Exhibit B– Berger v. Xerox)(Kohen, Jamie) Modified on 7/14/2008 (Brown, S.). (Entered: 07/11/2008)
07/11/2008	294	ENTERED IN ERROR: MOTION for Bond *(Memorandum on Appropriate Amount)* by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Attachments: # 1 Affidavit of Sharon Taulman, # 2 Exhibit 1, # 3 Exhibit 2)(Bruce, Stephen) Modified on 7/14/2008 (Brown, S.). (Entered: 07/11/2008)
07/11/2008	295	Post TRIAL MEMO re Appropriate Bond Amount by CIGNA Corp, CIGNA Pension Plan. (Attachments: # 1 ExhibitA, # 2 ExhibitB)(Brown, S.) Modified on 7/14/2008 replaces entry #293

		(Brown, S.). (Entered: 07/14/2008)
07/11/2008	296	Post TRIAL MEMO re Appropriate Bond Amount by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Attachments: # 1 Affidavit, # 2 Exhibit, # 3 Exhibit2)(Brown, S.) Modified on 7/14/2008 replaces entry #294 (Brown, S.). (Entered: 07/14/2008)
07/18/2008	298	TRIAL MEMO *Reply to 296 Post Trial Memorandum of Law on the Appropriate Bond Amount* by CIGNA Corp, CIGNA Pension Plan Estimated trial time 7 days. (Attachments: # 1 Exhibit A– Henderson Declaration)(Kohen, Jamie) Modified on 7/21/2008 to create link (Brown, S.). (Entered: 07/18/2008)
07/18/2008	299	TRIAL MEMO *on Appropriate Amount of Bond* by Janice C. Amara, Gisela R Broderick, Annette S Glanz. (Attachments: # 1 Affidavit of Sharon Taulman)(Bruce, Stephen) (Entered: 07/18/2008)
07/22/2008	300	Ruling and ORDER re 298 Trial Memo Reply to 296 Post Trial Memo of Law on Appropriate Bond Amount, 299 Trial Memo on Appropriate Bond Amount, 295 Post Trial Memo re Appro-

		priate Bond Amount, 296 Post Trial Memo re Appropriate Bond Amount;...CIGNA shall post an appeal bond of $40 million no later than August 5, 2008. Signed by Judge Mark R. Kravitz on 7/22/08. 3 pgs(Brown, S.) (Entered: 07/22/2008)
07/30/2008	301	Supersedeas BOND in the amount of $ 40,000,000. posted by CIGNA Corp Receipt Number 1144 (Brown, S.) (Entered: 07/30/2008)
09/25/2008	302	Index to Record on Appeal by Janice C. Amara, Gisela R Broderick, Annette S Glanz re 289 Notice of Appeal, 267 Response, 259 Bench Trial – Completed, 24 Memorandum in Support of Motion, 269 Order, 159 Exhibit, 183 Response, 114 MOTION in Limine, 117 Memorandum in Opposition to Motion, 291 Order on Motion for Attorney Fees, 191 Response, 193 Trial Memo, 209 Bench Trial – Held, 111 Response, 211 MOTION for Judgment as a Matter of Law, 251 Trial Memo, 82 MOTION to Decertify the Class, 201 Memorandum in Opposition to Motion, 202 Notice (Other), 281 Order, 278 Miscellaneous Hearing, 156 Amended Complaint, 95 Order,, 263 Exhibit List, 188 Exhibit

		List, 265 Response, 256 Trial Memo, 212 Order on Motion for Judgment as a Matter of Law, 79 Response, 268 Trial Memo, 166 Answer to Amended Complaint, 80 Order on Motion for Leave to File, 87 Memorandum in Opposition to Motion, 241 Order, 231 Trial Memo, 81 Answer to Amended Complaint, 161 MOTION for Sanctions, 174 Trial Memo, 77 MOTION for Leave to File, 290 Status Conference, 299 Trial Memo, 210 Bench Trial – Held, 153 Order on Motion in Limine, 113 Response, 275 Trial Memo, 115 Memorandum in Support of Motion, 112 MOTION to Amend/Correct 1 Complaint, 294 MOTION for Bond *(Memorandum on Appropriate Amount)* MOTION for Bond *(Memorandum on Appropriate Amount)*, 249 Response, 293 MOTION for Bond *Memorandum of Law On the Appropriate Bond Amount*, 91 Reply to Response to Motion, 106 Miscellaneous Hearing, 284 Trial Memo, 273 Order, 90 Order on Motion for Leave to File, 238 Notice (Other), 214 Order on Motion in Limine, 204 Bench Trial – Held, 145 Answer to Amended Complaint, 217 Proposed Order, 93 Order of Transfer, 292 Order, 186 Response, 295 Trial Memo,

		158 MOTION to Compel *Responses to Discovery and for Sanctions*, 110 Order on Motion for Extension of Time,, 285 Order, 260 Order,,,,, 240 Order, 178 MOTION in Limine *To Exclude The Expert Testimony of Professor Stratman, Memorandum of Law In Support Thereof, and Proposed Order*, 232 Trial Memo, 132 MOTION for Leave to File, 248 Proposed Findings of Fact and Conclusions of Law, 225 Bench Trial – Held, 222 Trial Memo, 138 Response, 296 Trial Memo, 200 Pretrial Conference, 252 Certificate of Service, 122 Response, 182 Response, 195 Order on Motion for Leave to File, 181 Proposed Findings of Fact and Conclusions of Law, 236 Trial Memo, 300 Order, 197 Trial Memo, 203 Bench Trial – Begun, 213 Order on Motion to Compel, 136 Order on Motion for Leave to File, 198 Exhibit List, 280 Response, 175 Proposed Findings of Fact and Conclusions of Law, 216 Trial Memo, 247 Trial Memo, 227 Bench Trial – Held, 105 Response, 298 Trial Memo, 262 Exhibit List, 194 Exhibit List, 264 Response, 277 Trial Memo, 261 Witness List, 279 Trial Memo, 192 Proposed Findings of Fact and Conclu-

		sions of Law, 301 Bond, 171 Stipulation, 297 Notice of Appeal, 165 Amended Complaint, 179 Response, 199 Second MOTION to Compel, 104 Response, 185 Memorandum in Opposition to Motion, 224 Notice (Other), 92 Order on Motion for Miscellaneous Relief, 288 Order,, 78 Memorandum in Support of Motion, 258 Status Conference, 164 Order on Motion for Leave to File,,,, Order on Motion to Compel,,,, Order on Motion for Sanctions,,, 187 Response, 237 Exhibit, 89 MOTION for Leave to File, 286 Judgment, 254 Trial Memo, 189 Reply to Response to Motion, 167 Stipulation, 223 Status Conference, 116 Memorandum in Support of Motion, 83 Memorandum in Support of Motion, 205 Trial Memo, 208 Bench Trial – Held, 276 Response, 190 MOTION for Leave to File *Supplemental Pre–trial Submission and Certificate of Counsel Conference*, 283 Response, 88 Reply to Response to Motion, 218 Calendar Entry, 250 Proposed Findings of Fact and Conclusions of Law, 274 Status Conference, 155 MOTION for Leave to File *Third Amended Complaint to Add Additional Named Representative*, 234 Trial Memo, 233 Exhibit

		List, 123 Order on Motion to Amend/Correct, Order on Motion for Leave to File, 196 Trial Memo, 239 Trial Memo, 86 Response, 130 Reply to Response to Motion, 157 Response, 180 Trial Memo, 124 Response, 287 MOTION for Attorney Fees *Motion to Defer Consideration of Claim for Attorneys,21 in 3:01-cv-02361-MRK, 61 in 3:01-cv-02361-MRK, 17 in 3:01-cv-02361-MRK, 41 in 3:01-cv-02361-MRK, 30 in 3:01-cv-02361-MRK, 38 in 3:01-cv-02361-MRK, 12 in 3:01-cv-02361-MRK, 26 in 3:01-cv-02361-MRK, 42 in 3:01-cv-02361-MRK, 35 in 3:01-cv-02361-MRK, 63 in 3:01-cv-02361-MRK, 58 in 3:01-cv-02361-MRK, 11 in 3:01-cv-02361-MRK, 43 in 3:01-cv-02361-MRK, 1 in 3:01-cv-02361-MRK, 33 in 3:01-cv-02361-MRK, 25 in 3:01-cv-02361-MRK, 64 in 3:01-cv-02361-MRK, 13 in 3:01-cv-02361-MRK, 23 in 3:01-cv-02361-MRK, 36 in 3:01-cv-02361-MRK039; Fees Pending Appeal*, 235 Certificate of Service, 162 Memorandum in Support of Motion. For docket entries without a hyperlink, contact the court to arrange for the

		document(s) to be made available to you. (Moukawsher, Thomas) (Entered: 09/25/2008)
09/25/2008	303	ENTERED IN ERROR: REPORT of Rule 26(f) Planning Meeting. (Moukawsher, Thomas) Modified on 9/26/2008 (Pesta, J.). (Entered: 09/25/2008)
09/26/2008		Docket Entry Correction : Per filer request, removed 303 Report of Rule 26(f) Planning Meeting from docket, was efiled on wrong case. (Pesta, J.) (Entered: 09/26/2008)
12/14/2009	304	MANDATE of USCA dated 12/11/09 Affirming Judgment re 297 Notice of Appeal, Affirming Judgment re 289 Notice of Appeal (Brown, S.) (Entered: 12/14/2009)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANICE C. AMARA, individually and on behalf of others similarly situated,	:	
Plaintiff,	:	
v.	:	Civil No. 3:01CV2361 (DJS)
CIGNA CORPORATION AND CIGNA PENSION PLAN,	:	
Defendants.	:	

MEMORANDUM OF DECISION

Plaintiff has commenced the above-captioned lawsuit, styled as a putative class action, pursuant to the Employee Retirement Income Security Act ("ERISA") and Age Discrimination in Employment Act ("ADEA") seeking equitable relief for alleged failure to comply with ERISA's non-forfeiture and age discrimination provisions. Pending before the court is plaintiff's motion to certify the proposed class.[1] For the reasons set forth herein, this motion (dkt. # 23) is **GRANTED.**

FACTS

The amended complaint, memoranda, and affidavits submitted in support of the motion for class

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[1] Also pending is CIGNA's motion to supplement the record (dkt. # 36). This motion is **GRANTED.**

certification and the response thereto reveal the following facts material to the court's decision.[2]

Plaintiff's claims arise from defendant CIGNA's conversion of its prior traditional defined benefit pension plan, CIGNA Pension Plan Part A ("Part A"), into a defined benefit cash balance pension plan, CIGNA Pension Plan Part B ("Part B"). This conversion changed the method of calculating and accounting for annuity benefits by basing the amount of the annuity upon a hypothetical individual account balance. This hypothetical balance is derived from "credits" reflecting a predetermined percentage of the employee's salary ("benefit credit") and interest at a predetermined rate ("interest credit"). Thus, the cash balance plan resembles a defined contribution plan, but remains a defined benefit plan. Plaintiff challenges this conversion and contends that Plan B fails to meet the requirements governing defined benefit plans set forth in ERISA, the Internal Revenue Code ("IRC"), and the ADEA.[3]

Specifically, plaintiff claims that the conversion of the pension plan necessarily conditioned receipt of further benefits under the provisions of Part B upon her acceptance of CIGNA's valuation of her accrued benefit under the prior plan. Upon conversion,

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[2] The court offers this brief discussion of plaintiff's claims by way of summary only; plaintiff's claims are in no way limited or construed by this discussion.

[3] Employers' conversion of their traditional pension plans to cash balance plans has incited vigorous commentary within the practice area, which has just begun to permeate into courts throughout the country. See, e.g., Edsen v. Bank of Boston, 229 F.3d 154 (2d Cir. 2000); Eaton v. Onan Corp., 117 F. Supp. 2d 812 (S.D. Ind. 2000).

plaintiff's annuity benefit was no longer based upon the formula set forth in Part A, but rather was transformed into a hypothetical individual account, with a particular "balance." This "initial retirement account" was based upon the present actuarial value of the annuity benefit due plaintiff at her normal retirement age, which is sixty-five years of age, under Part A. Part B provides that when plaintiff elects to receive her benefit, she would receive the greater of the account balance, or the "minimum benefit" as that term is defined under Part B.

In layman's terms, as a result of these calculations plaintiff experienced a period where benefits "constructively" accrued in her cash balance account. This is so because the minimum benefit payable to plaintiff was greater than her hypothetical account balance, which means that plaintiff would not begin to realize the accrual of benefits under Plan B until her hypothetical account balance exceeded the amount of the minimum benefit. Thus, under Part A, plaintiff would have received a certain amount upon her retirement. When the plan converted to Part B, plaintiff's annuity benefit would remain constant for a certain period of time even though she is technically accruing additional benefits under Part B. Plaintiff contends that this methodology violates either ERISA's non-forfeiture provision, 29 U.S.C. § 1053(a), or the IRC's "133 & 1/3" rule, 29 U.S.C. § 1054 (b)(1). As a remedy, plaintiff seeks equitable relief pursuant to 29 U.S.C. § 1132(a).

In addition, plaintiff also contends that CIGNA's summary plan description ("SPD") is misleading, and that Plan B impermissibly discriminates on the basis of age in that it provides for decreasing benefits

commensurate with increasing age. She also seeks equitable relief as a remedy for these claims as well.

DISCUSSION

In order to obtain class certification, plaintiff must satisfy each of the four prerequisites set forth in Rule 23(a) of the Federal Rules of Civil Procedure. See Caridad v. Metro-North Commuter Railroad, 191 F.3d 283, 291 (2d Cir. 1999). Once those prerequisites are satisfied, plaintiff must also establish the requirements set forth in Rule 23(b).

Rule 23(a) requires satisfaction of the following four factors. First, the class must be so numerous that joinder of all members is impracticable. Second, there must exist questions of law or fact common to the class. Third, the claims or defenses of the representative parties must be typical of the claims or defenses of the class. Fourth, the representative parties must be able to protect the interests of the class fairly and adequately. These four elements are often referred to, respectively, as "numerosity," "commonality," "typicality," and "adequacy of representation."

CIGNA's principal objections to class certification do not relate to the specific requirements set forth in Rule 23, but rather are premised upon prudential considerations. First, CIGNA argues that it is bound to, or has agreed to, provide any relief ordered by the court on a class-wide basis, thereby rendering class certification superfluous. CIGNA's legal requirements and proposed agreements do not render the question of class certification moot. Should plaintiff prevail, the court must, consistent with its obligations under ERISA, administer appropriate relief notwithstanding CIGNA's assurances.

Second, CIGNA claims that providing the relief requested in the complaint on a class-wide basis may actually harm some members of the class. Specifically, CIGNA argues that provision of this relief could actually reduce benefit allocations to members of the class. If CIGNA is correct, this problem can be addressed when the court determines what remedy should be provided if plaintiff prevails on the merits of her claims. Further, this problem could also be addressed by members of the class asserting these arguments once the class has been certified. At any rate, certification of the class is the first step toward fashioning a solution to this problem, if the problem indeed exists.

CIGNA's prudential objections do not persuade the court that class certification is not warranted. Further, as discussed below, plaintiffs have met their burden under Rule 23(a) and have demonstrated that their putative class meets the four factors set forth therein.

A. Numerosity

The first prerequisite, numerosity, requires that the proposed class be so "numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Plaintiff has submitted evidence that there are at least 25,000 class members. (See Bruce Dec. ¶¶ 4-5). Joinder of 25,000 plaintiffs is impracticable, and plaintiff has established the first prerequisite.

B. Commonality & Typicality

The second and third requirements of Rule 23(a) are the existence of questions of law or fact common to the class, and whether the named plaintiff's claims are typical of the claims of the class. See generally Caridad v. Metro-North Commuter Railroad,

191 F.3d 283, 293 (2d Cir. 1999) (explaining that the commonality criterion often merges with the typicality requirement and that the disputed issue of law or fact must "occupy essentially the same degree of centrality to the named plaintiff's claim as to that of other members of the proposed class"). In such circumstances, "the presence of even an arguable defense peculiar to the named plaintiff or a small subset of the plaintiff class may destroy the required typicality of the class as well as bring into question the adequacy of the named plaintiff's representation." J.H. Cohn & Co. v. American Appraisal Assocs., 628 F.2d 994, 999 (7th Cir. 1980); see also Kline v. Wolf, 88 F.R.D. 696, 699 (S.D.N.Y. 1981) ("The members of [a] class are entitled to representatives unencumbered by 'unique defenses.'").

Plaintiff Amara has presented claims with common questions of law and fact to those of each class member. Adjudication of the first count of the class action complaint turns upon the pure legal question of whether CIGNA's pension plan violates ERISA. The second count of the class complaint also turns upon a common legal question generally applicable to all members of the class: whether CIGNA's SPD is misleading.[4] Finally, the third court of the class

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[4] The parties dispute whether, in order to prevail on this claim, each plaintiff must make an individualized showing of detrimental reliance upon the misleading SPD provision. The U.S. Court of Appeals for the Second Circuit has not yet decided this issue. However, the threshold inquiry on this claim, whether the SPD was misleading, is a legal question common to each class member. Therefore, class certification to decide this question is appropriate. Should plaintiffs prevail on this threshold question, and the court accept defendant's interpreta-

complaint also turns upon a legal question concerning the applicability of the parallel age discrimination provisions of the ADEA, ERISA, and the IRC to CIGNA's pension plan. Regardless of whether the answer to each of these inquiries is affirmative or negative, the answer is identical as to each member of the class. Thus, plaintiff has established the second and third prerequisites.

CIGNA's contentions to the contrary are without merit. The fact that plaintiff Amara left the employ of CIGNA for a brief period and then returned does not render her claim fundamentally different from those of the other class members. The key provision in this analysis is the provision dictating the method of calculating the participant's initial account balance. The relevance of the timing of this calculation is not readily apparent. Further, any specialized knowledge about the requirements of ERISA does not render plaintiff Amara's claims atypical because her knowledge has no bearing on the common legal questions prevalent in the class complaint.

C. Adequacy

In order to certify a class, the plaintiff must demonstrate that he or she will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23 (a)(4). "The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent." Amchem Products, Inc. v. Windsor, 521 U.S. 591, 625 (1997). Here, plaintiff Amara is an ade-

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[Footnote continued from previous page]

tion of the law on this point, the court will revisit class certification on this issue as appropriate.

quate class representative. Plaintiff Amara has affirmatively stated her dedication to pursuing this lawsuit, and has selected competent counsel to prosecute her claims on behalf of the class. CIGNA's argument to the contrary regarding a potential conflict of interest involving counsel for the plaintiff fails to detract from this conclusion because the purported conflict is, first, highly speculative, and, second, not obviously relevant to the claims being asserted by these plaintiffs.

D. Rule 23(b)

Having found that plaintiff has demonstrated the prerequisites to class certification set forth in Rule 23(a), the class shall be certified under Rule 23(b)(2). Rule 23(b)(2) states that class certification is appropriate when "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. . . ." Fed. R. Civ. P. 23(b)(2). Plaintiffs' claims fall squarely within the purview of this provision because they seek injunctive relief, pursuant to ERISA, generally applicable to the entire class.

CONCLUSION

For the reasons set forth herein, plaintiff's motion to certify the putative class (dkt. # 23) is **GRANTED.** The certified class is defined as follows:

Any and all persons who:

1. Are former and current CIGNA employees;

2. Participated in the CIGNA Pension Plan before January 1, 1998; and

3. Have participated in the "Part B" CIGNA Pension Plan at any time since January 1, 1998.

So ordered at Hartford, Connecticut this 20th day of December, 2002.

/s/

DOMINIC J. SQUATRITO
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Janice C. Amara, 39 Town Beach Rd., Old Saybrook, CT 06475; Gisela R. Broderick, 143 Old Post Road, Tolland, CT 06084; Annette S. Glanz, 104 Bridgeport Dr., Mooresville, NC 28117, individually and on behalf of others similarly situated,	:	
Plaintiffs,	:	
v.	:	Civil No. 3:01-CV-2361 (MRK)
Cigna Corp. and Cigna Pension Plan,	:	January 9, 2006
Defendants.	:	

THIRD AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER ERISA

Nature of the Complaint

1. This Complaint is about the retirement benefits that Janice Amara, Gisela Broderick, Annette Glanz, and similarly-situated Cigna employees are required to receive under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended,

29 U.S.C. § 1001, et seq. Effective January 1, 1998, Defendants reduced future rates of retirement benefit accruals and impermissibly conditioned receipt of those accruals so that actual benefit receipt may be illusory for as many as 10 years. This violates ERISA's disclosure requirements and its requirement that the payment of vested retirement benefits must be unconditional. Employees also lost benefits earned before 1998 that are to be statutorily-protected and have been subject to still lower rates of benefit as they grow older.

Jurisdiction, Venue, and Service of Process

2. Plaintiffs invoke the jurisdiction of this Court pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, et seq.

3. Venue in this Court is proper under ERISA Section 502(e)(2), 29 U.S.C. § 1132(e)(2), in that Defendants Cigna Corp. and Cigna Pension Plan may be found in this District and the breach took place in this District.

4. Service of process is authorized in any other district where a defendant resides or may be found. ERISA Section 502(e)(2), 29 U.S.C. § 1132(e)(2).

The Parties

5. Plaintiff Janice C. Amara resides at 39 Town Beach Rd., Old Saybrook, CT 06475. She worked for Cigna for 28 years until October 2003. Ms. Amara is a participant in the Cigna Pension Plan as the term participant is defined in ERISA Section 3(7), 29 U.S.C. § 1002(7).

6. Plaintiff Gisela R. Broderick resides at 143 Old Post Road, Tolland, CT 06084. She worked for

Cigna for 21 years until March 2004. Ms. Broderick is a participant in the Cigna Pension Plan.

7. Plaintiff Annette S. Glanz resides at 104 Bridgeport Dr., Mooresville, NC 28117. She worked in Connecticut for Cigna for 16 years until June 2004. Ms. Glanz is also a participant in the Cigna Pension Plan.

8. Defendant Cigna Pension Plan is an employee benefit plan as defined in Section 3(3) of ERISA, 29 U.S.C. § 1002(3), and an "employee pension benefit plan" as defined in Section 3(2)(A), 29 U.S.C. § 1002(2)(A). The Cigna Pension Plan can be found in Connecticut because Cigna employees earn and receive benefits in Connecticut.

9. Defendant Cigna Corp. is a business corporation organized and existing under the laws of the State of Delaware, and operating in all 50 states, including Connecticut. Cigna is qualified to do business and does business in Connecticut.

10. Defendant Cigna Corp. functions as the "plan sponsor" and "plan administrator" for the Cigna Pension Plan within the meaning of ERISA. Through a Corporate Benefit Plan Committee, Defendant Cigna Corp. also functions as a "named fiduciary" for the Cigna Pension Plan within the meaning of ERISA.

Class Action Allegations

11. Plaintiffs bring this action as a class action in accordance with Federal Rule of Civil Procedure 23 to resolve disputes under the Employee Retirement Income Security Act of 1974. Judicial economy dictates that the issues be resolved in a single action.

12. The class is defined as any and all persons who:

(a) Are former or current Cigna employees,

(b) Participated in the Cigna Pension Plan before January 1, 1998, and

(c) Have participated in the "Part B" Cigna Pension Plan at any time since January 1, 1998.

13. The class covers all participants in the Cigna Pension Plan whose benefit accruals have been reduced and whose receipt of benefit accruals under the pre-1998 Part B plan has been unlawfully conditioned in violation of ERISA Section 203(a), 29 U.S.C. § 1053(a).

14. On information and belief the class covers over 27,000 individuals. The class is so numerous that joinder of all members is impracticable.

15. There are common questions of law and fact affecting the rights of the members of the class. The claims of the named class representatives are typical of the claims of the class. The named representatives will fairly and adequately protect the interests of the class.

16. This action is maintainable as a class action under Rule 23(b)(2) because Defendant has acted and/or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and other equitable relief in favor of the class.

Statement of Facts

17. Janice Amara was born on April 3, 1950. She worked for Cigna from July 17, 1972 to August 10, 1995 and from September 8, 1998 to October 17, 2003. Ms. Amara managed Cigna's pension compliance area from 1992 to 1995. She returned to CIGNA in 1998 as a director of national accounts for

Cigna's Retirement & Investment Services division. At her separation she was the NASD principal for the client services organization of Cigna's Retirement & Investment Services, as well as a client executive in charge of accounts.

18. Gisela Broderick was born on March 12, 1944. She worked for Cigna from August 4, 1980 to December 31, 1997 and from June 26, 2000 to March 12, 2004. Ms. Broderick was a project manager in the Information Technologies Department of Cigna Systems.

19. Annette Glanz was born on October 6, 1964. She worked for Cigna continuously from August 8, 1988 to June 18, 2004. Ms. Glanz was a senior health plan reserve consultant in Investment Services and later a project controller in the Health Care division. Following a lay off in June 2004, Ms. Glanz moved to the Charlotte, North Carolina area, where she currently resides.

20. Effective January 1, 1998, Cigna converted to a "cash balance" pension plan (which Cigna calls "Part B"). Cigna adopted the cash balance pension plan to replace Cigna's traditional defined benefit pension plan.

21. Employees who were hired before 1989 and had a specified combination of age and service in excess of 45 points were grand-fathered under the prior, more generous pension plan formula (now called "Part A").

22. Since Ms. Amara returned to Cigna in September 1998, Cigna has placed her under its "Part B" cash balance formula. Ms. Broderick was also placed in Cigna's Part B plan after she returned to Cigna in June 2000. Although both were hired before 1989

and had a combination of age and service in excess of 45 points (thereby qualifying them to be "grandfathered"), Cigna moved them to the Part B cash balance formula under an amended "rehire" rule that Cigna's CEO adopted on December 21, 1998.

23. Cigna also moved Ms. Glanz to the Part B cash balance formula after December 31, 1997 because she did not have a combination of age and service in excess of 45 points even though she was hired before 1989. At the time the cash balance plan became effective, Ms. Glanz had 42 age and service points.

24. Under the previous benefit formula, pension benefits were 2% of a highest average of salary times years of service. Under the Part B cash balance pension formula, benefits accrue at a lower rate and have been subjected to additional conditions that did not apply under the previous formula.

25. Discovery shows that Cigna knew that the rate of benefit accruals under the prior formula was "much higher" than under the cash balance plan. Because the cash balance formula is based on each year's pay whereas the prior formula is based on a highest average of pay, benefits are significantly reduced from that change alone. A spreadsheet prepared by a Cigna actuary further shows that the cash balance accrual rates decline from 1.73% of each year's pay at age 43 down to .66% by age 65. Comparisons performed by the William Mercer Company indicated that most employees' benefits would be reduced by 20% or more.

26. On December 14, 1995, Cigna notified Ms. Amara that her accrued benefits were $2,010.41 per month in the form of an annuity lasting from age 55

to 65, with payments reduced to $1,565.48 per month after age 65.

27. Over 5 years later, on February 23, 2001, Cigna notified Ms. Amara that her accrued benefits under Part B were $1,340.28 per month in the form of an age 55 annuity. Instead of increasing the retirement benefits, Cigna had decreased her benefits by $670.13 per month between age 55 and 65 and by $225.20 per month after age 65.

28. Ms. Amara complained that a decrease in her retirement benefits did not comply with ERISA Section 204(g), 29.U.S.C. § 1054(g), which prohibits decreases in accrued benefits as a result of plan amendments. See also 26 C.F.R. 1.411(d)-4. In an e-mail dated April 20, 2001, Andrew Hodges, a consulting actuary for Cigna, stated that there had been a "flaw" in the "conversion record."

29. Discovery revealed that the "flaw" in Ms. Amara's record was actually a systemwide hole. Cigna's administrative systems were not set up to notify participants under the age of 55 that they retained rights to protected annuity benefits under Part A, including to early retirement subsidies and a "free 30%" joint and survivor benefit.

30. Discovery further revealed that the opening cash balance accounts did not include either the valuable early retirement subsidies or the free 30% joint and survivor benefit, both of which were provided under the prior benefit formula and are protected under ERISA Section 204(g) against elimination by plan amendment. The free 30% joint and survivor benefit was also not included with the "minimum benefits" that Cigna protected.

31. Certain reductions that Cigna applied in establishing the opening account balances under cash balance were neither disclosed nor contained in the Plan document at the time when they were applied. The "pre-retirement mortality discount" that Cigna applied in computing opening cash balance accounts was not described in the SPD or in the Plan document in effect at the time. Likewise, the elimination of the "free 30%" survivor's annuity is not described in the October 1998 SPD or in the Plan document.

32. Because Ms. Amara complained about the benefits estimate showing decreased benefits, a benefits specialist for Cigna mailed her another Benefit Summary Sheet on July 6, 2001, this time showing a benefit at age 55 of $1,833.65 per month. It is Ms. Amara's understanding that this monthly amount is to represent the actuarial equivalent of the benefit which Ms. Amara was already entitled to receive in December 1995 of $2,010 per month from age 55 to 65 and $1,565 per month thereafter.

33. If this were to constitute her total current benefits, Ms. Amara's employment with Cigna from September 1998 to October 2003 would not have added even $1.00 to the retirement benefits she already possessed at the end of 1995.

34. Cigna's "Part B" Plan document provides annual pay credits and interest that should be *adding* to Ms. Amara's current benefit total. Beginning at the end of 1998, Ms. Amara was credited with annual pay credits of 7% of her salary up to one-half of the social security wage base plus 8.5% of her salary above that level. Interest is to accumulate on these annual pay credits at rates of 4.5% and above.

35. Cigna should have allocated over $7,500 annually in pay credits to Ms. Amara's account from

1998 to the end of 2003. After the termination of her employment, Ms. Amara should receive the annual pay credits, with interest in annuity or lump sum form. However, when Ms. Amara requested a benefits estimate after her separation from service at the end of 2003, those sums were not included. She was instead offered even lower benefits than the first time of $915.65 per month. After she complained again, she was offered the $1,833 per month annuity that she had already earned before 1998, with no addition whatever to reflect the over $30,000 in pay credits that Cigna was to have allocated to her cash balance "account" between 1998 and the end of 2003.

36. Ms. Broderick likewise should have been allocated over $30,000 in pay credits for her employment from June 2000 to March 2004. However, when she commenced benefits in December 2004, those sums were not included. Her benefits had not increased from their pre-1998 level. And Cigna had dropped the free 30% joint and survivor annuity that was to be protected under ERISA Section 204(g).

37. On January 1, 1998, Ms. Glanz's benefits under the Part A formula were $564 per month, based on 9 years of credited service and final average earnings of approximately $48,500 over the years from 1995 to 1997. This translated to an accrual rate equal to 1.55% of her final average earnings multiplied by her years of credited service. On January 1, 1998, Cigna set up an account balance for Ms. Glanz of $10,005.70 which was to represent the value of her $564 per month pension benefit. From January 1, 1998 through December 31, 2004 this hypothetical account balance grew with pay and interest credits to $43,971.80. Converting the balance back into annuity form produces a retirement benefit of $935.29 per

month. As compared with the 1.55% accrual rate that Ms. Glanz enjoyed under the prior formula, the new formula translated to 0.9% of her final average earnings of approximately $78,900 over the 36 months from July 2001 to June 2004.

38. If Ms. Glanz had continued under the Tier 1 formula, her benefits would have been approximately $1,631 per month, instead of $935.29 per month, or 74% higher than under the cash balance formula. The Supplemental Declaration of Claude Poulin, the Plaintiffs' actuarial expert, shows, moreover, that for the first four years after 1998, Ms. Glanz was, like Ms. Amara and Ms. Broderick, under a wear-away where she was effectively earning nothing more than what she had already accrued. Suppl. Decl. Ex. 3.

Claim One: Conditioning Receipt of Benefit Accruals which Are Necessary to Satisfy ERISA's Anti-Backloading Rules Violates the Anti-Backloading Rules and the Nonforfeitability Standard.

39. Cigna's CEO, Wilson H. Taylor, approved the text of the Part B Plan document with detailed rules on cash balance benefit accruals and payment of accrued benefits on December 21, 1998.

40. Cigna's Part B Plan document offers the annual pay credits and interest described above, but it conditions actual receipt of those amounts. Article VII of the Part B Plan document provides that Ms. Amara can receive the annual accrued benefits she has earned since 1998 *if and only if* she does not receive the $1,833 per month in early retirement benefits that she previously earned under the Part A Plan. The same applies to Ms. Broderick, Ms. Glanz and others.

41. Section 7.3 of the Cigna Plan document makes it impossible for Ms. Broderick, Ms. Amara, or Ms. Glanz to receive their protected retirement benefits under Part A (i.e., the benefits that they earned before 1998) plus their annual accruals since 1998 under Part B. To receive their annual accruals since 1998, they must accept a valuation of their Part A benefits specified in Section 1.28 of the Plan document ("Initial Retirement Account"). The valuation specified in Section 1.28 excludes the value of "protected" early retirement rights under Part A and the value of the free 30% joint and survivor benefits. Cigna has furthermore interpreted Section 1.28 to permit a pre-retirement mortality discount to be assessed in that valuation which was never used before.

42. To satisfy the "anti-backloading" rules in ERISA Section 204(b)(1)(B), 29 U.S.C. § 1054(b)(1)(B), Cigna must offer participants annual rates of benefit accrual for each plan year. See also 26 C.F.R. 1.411(b)-2(i)(B); *Esden v. Bank of Boston*, 229 F.3d 154, 167 (2d Cir. 2000) (the "only test that the [Bank of Boston's cash balance] plan might satisfy is the so-called 133 1/3 percent test under ERISA section 204(b)(1)(B)"; "that test requires that the value of the benefit accrued in any year . . . not exceed the value of a benefit accrued in any previous year by more than 33%").

43. If the accrued benefits for 1998, 1999, etc. are to count for compliance with ERISA Section 204(b)(1)(B), they must be benefits that will become nonforfeitable under ERISA's vesting rules. ERISA Section 203(a), 29 U.S.C. § 1053(a), provides that benefit accruals must be "nonforfeitable" once a participant has the years of service required to be

vested. A nonforfeitable right is a right that is "unconditional." ERISA Section 3(19), 29 U.S.C. § 1002(19).

44. However, Sections 1.28 and 7.3 of Cigna's plan document place conditions on actual receipt of annual benefit accruals after January 1, 1998. Cigna has made receipt of Ms. Amara's, Ms. Broderick's, and Ms. Glanz's annual cash balance pension accruals conditional on giving up part of their previously-earned benefits. A nonforfeitable right to a benefit cannot be one that has a value of $7,500 under one condition and $0 under other conditions.

45. "A right which, at a particular time, is conditioned under the plan upon a subsequent event, subsequent performance, or subsequent forbearance which will cause loss of such right is a forfeitable right at that time." 26 C.F.R. 1.411(a)-4.

46. IRS Notice 96-8, 1996-1 C.B. 359, explains:

> If benefits . . . have accrued [but] those benefits are disregarded when benefits commence before normal retirement age, the plan has effectively conditioned entitlement to the benefits . . . on the employee not taking a distribution prior to retirement age.

Accord *Esden v. Bank of Boston*, 229 F.3d 154, 168 (2d Cir. 2000) ("by making part of [Lynn Esden's] benefit conditional on the form of payment chosen, the Plan made that benefit forfeitable, in violation of ERISA").

47. Cigna has made receipt of annual pension accruals after January 1, 1998 conditional on participants foregoing part of their previously earned benefits or taking a retirement distribution only at the plan's normal retirement age. This violates the non-

forfeitability rules in ERISA Section 203(a), 29 U.S.C. § 1053(a).

Claim Two: ERISA Requires that Benefit Reductions, Conditions on Receipt of Additional Accruals, and Other Disadvantages Be Disclosed in the Summary Plan Description.

48. Under ERISA, Summary Plan Descriptions (SPDs) must be distributed to participants which disclose the circumstances that may result in reductions, disqualification, denial, loss, or forfeiture of any benefits that a participant might otherwise reasonably expect to receive on the basis of the description of the benefits offered by the plan. 29 C.F.R. 2520.102-3(l). The disclosure must be written in a manner calculated to be understood by the average plan participant. 29 C.F.R. 2520.102-2(a). Reductions, restrictions and other disadvantages must be described no less prominently or understandably than the advantages of the plan. 29 C.F.R. 2520.102-2(b).

49. The SPDs that Cigna distributed to participants in October 1998 and September 1999 do not describe any benefit reductions, conditions on receipt or other disadvantages of the new cash balance pension accruals. For example, the SPD's description of the annual pay credits does not describe any conditions on their receipt. It states:

> Each dollar's worth of credit is a dollar of retirement benefits payable to you after you are vested. Under the plan, your benefit will grow steadily throughout your career as credits are added to your account.

The same description was offered in a revised SPD dated September 1999. The benefit reductions and the conditional payment rule which Cigna's CEO approved on December 21, 1998 were not disclosed to participants in the SPD dated October 1998, the revised SPD dated September 1999, or any SPD distributed after that date.

50. In the absence of the statutorily-required disclosure, a rule that causes benefits to be lost or forfeited may not be enforced. *Heidgerd v. Olin Corp.*, 906 F.2d 903 (2d Cir. 1990); *Burke v. Kodak Ret. Inc. Plan*, 336 F.3d 103, 111 (2d Cir. 2003).

Claim Three: The Rate of Benefit Accruals After 1998 Is Reduced Because of Age.

51. ERISA Section 204(b)(1)(H)(i), 29 U.S.C. § 1054(b)(1)(H)(i), prohibits an employer from establishing or maintaining plan rules that reduce "the rate of an employee's benefit accrual . . . because of the attainment of any age." Under a defined benefit plan, an employee's benefit accrual is expressed in the form of an annuity at retirement.

52. Benefit accruals under a cash balance pension plan are a function of two components: Pay credits and interest credits. Due to the effect of compound interest until retirement, interest credits under a cash balance plan are more substantial for younger participants. Unless pay credits progressively counter-balance the interest credits, the rate of an employee's benefit accrual will be reduced because of age.

53. Cigna's cash balance formula increases its pay credits by 1% at 10-point age and service intervals until the participant accumulates 65 points, e.g.,

age 45 with 20 years of service or age 50 with 15 years of service. After that point, the pay credit is fixed at a flat percentage of pay.

54. As a result, once a participant has more than 65 points, the rate of benefit accrual drops based on age. In addition to suffering from the conditions on actual receipt described in the First Claim, Janice Amara's rate of cash balance benefit accrual decreases from almost 1.6% of pay at age 48 (her age when she was rehired) to 1.3% at age 53 (disregarding the Plan's wear-away). Likewise, Ms. Broderick's rate of cash balance accrual dropped from 1.1% of pay when she was rehired at age 56 to .9% of pay when she left Cigna in March 2004 at age 60. Ms. Glanz's accrual rate decreased from 1.63% of her 1998 pay to 1.3% of her 2004 pay.

55. As codified by Section 204(b)(1)(H)(i), ERISA's policy is that an employee's rate of benefit accrual should not be reduced because of age but should remain as great as the rate for a younger employee with the same salary.

Claim Four: Cigna Did Not Give Participants Timely or Adequate Advance Notice of Benefit Reductions as Required by ERISA Section 204(h).

56. Cigna has never notified Plan participants of significant reductions in the rate of future accruals under the Part B cash balance formula. A November 1997 newsletter with an inset by the CEO counterfactually states that the changes "significantly enhance" the retirement program.

57. In a Rule 30(b)(6) deposition, Cigna identified an article in this newsletter as Cigna's ERISA Section 204(h) notice, but the Rule 30(b)(6) witness

admitted that the article does not disclose any reductions in the rate of accruals under the Part B formula. The October 1998 SPD and the September 1999 revision of the SPD likewise contain no description of reductions in the rate of accruals.

58. By converting to a cash balance pension formula with reduced benefits without providing notice to participants of a significant reduction in the future rate of accruals at least 15 days before the amendments' effective date, Cigna violated ERISA Section 204(h), 29 U.S.C. § 1054(h), which requires that adoption of the amendments precede notice and that notice of the reduction precede implementation by at least 15 days.

59. As indicated in ¶ 20, Cigna's CEO also amended a "rehire" rule on December 21, 1998 to require rehired employees like Ms. Broderick and Ms. Amara to participate in the Part B plan instead of resuming participation under the "much higher" Part A formula. However, Cigna did not notify the rehired employees of the amended rule before they accepted offers of re-employment. Nor did Cigna notify them that participation in the Part B plan would result in significant reductions in their rates of future benefit accruals.

60. By implementing the amended rehire rule without notice of the resulting significant reduction in the future rate of accruals, Cigna violated ERISA Section 204(h), 29 U.S.C. § 1054(h).

Claim Five: Cigna Has Reduced Previously-Earned Benefits in Violation of ERISA Section 204(g)'s Anti-Cutback Rule

61. Cigna has violated ERISA Section 204(g)'s anti-cutback rule in at least three ways. First, it offers cash balance options without notifying participants of their rights to "minimum benefits" earned before 1998 with greater value. Second, Cigna has categorically denied the payment of certain protected benefits, including the free 30% survivor's benefit. For example, Ms. Broderick was denied the free 30% survivor's benefit, which should add over $70 per month to her present retirement income. Third, Cigna has offered participants who separate from service before age 55 lump sum distributions that are not based on the value of the "minimum benefits" that ERISA requires to be protected–even if that value is higher.

62. Cigna has also violated the disclosure rules that apply when benefit options have unequal values. Under 26 C.F.R. 1.401(a)-20, Q&A 36, which implements ERISA Section 205(g), 29 U.S.C. § 1055(g), Cigna is required to offer "sufficient" information "to explain the relative value of the optional forms of benefit available under the plan (e.g., the extent to which optional forms are subsidized relative to the normal form of benefit...)." Treasury regulations provide that "no consent is valid" unless this explanation has been provided. 26 C.F.R. 1.417(e)-1(b)(2)(i). Neither Cigna's SPD nor its benefit election materials disclose that the lump sum payment of a participant's cash balance account can be less valuable than the annuity benefits that participants earned before 1998.

Prayer for Relief

WHEREAS, the Plaintiff prays that this Court:

A. Declare that Janice Amara's, Gisela Broderick's, and Annette Glanz's benefit accruals under the "Part B" formula of the Cigna Pension Plan must not be reduced because of age or in comparison to the prior formula without advance notice and declare that their previously-earned benefits must be protected in conformity with ERISA and that their future benefit accruals must not be conditional on giving up part of those previously-earned benefits.

B. Enjoin the application of Cigna's reductions in the rate of benefit accruals, its reductions in previously-earned benefits and its conditions on receipt of future benefit accruals because of the ERISA minimum standard and disclosure violations.

C. Order appropriate equitable and remedial relief to ensure that this relief is implemented on a class-wide basis.

D. Order such other equitable and remedial relief as the Court deems appropriate and award attorneys' fees and expenses.

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANICE C. AMARA et al.	:	
Plaintiffs,	:	3:01 CV 2361 (MRK)
v.	:	
CIGNA CORP. AND CIGNA PENSION PLAN,	:	March 6, 2006
Defendants.	:	

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS CIGNA CORPORATION AND CIGNA PENSION PLAN TO THIRD AMENDED CLASS ACTION COMPLAINT

Defendants CIGNA Corporation ("CIGNA") and CIGNA Pension Plan ("the Plan") (collectively "Defendants"), by and through their attorneys, hereby respond to the numbered paragraphs of Plaintiffs Janice Amara, Gisela Broderick's, and Annette Glanz ("Plaintiffs") Third Amended Complaint as follows:

Nature of the Complaint

1. Defendants admit that the Third Amended Complaint purports to be about retirement benefits Plaintiffs allege they and similarly situated employees are entitled to receive under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Defendants deny the remaining allegations of paragraph 1.

Jurisdiction, Venue and Service of Process

2. Paragraph 2 states conclusions of law to which no responsive pleading is required.

3. Paragraph 3 states conclusions of law to which no responsive pleading is required.

4. Paragraph 4 states conclusions of law to which no responsive pleading is required.

The Parties

5. Defendants admit that Plaintiff Janice C. Amara resides at 39 Town Beach Road, Old Saybrook, CT 06475 and that she was employed by Connecticut General Life Insurance Company ("CGLIC"), a subsidiary of CIGNA, until October 2003. Defendants further admit that Plaintiff Amara is entitled to certain benefits under the Plan. The remaining allegations of paragraph 5 state conclusions of law to which no responsive pleading is required.

6. Defendants admit that Plaintiff Gisela R. Broderick resides at 143 Old Post Road, Tolland, CT 06084. Defendants further admit that Plaintiff Broderick worked for CIGNA's individual life insurance business, which was sold to Lincoln National Life on January 1, 1998, and that she terminated December 31, 1997 from participation in the CIGNA Pension Plan. Defendants further admit that Plaintiff Broderick worked for a company that is affiliated with CIGNA from June 2000 until March 2004. Defendants further admit that Plaintiff Broderick is entitled to certain benefits under the Plan. The remaining allegations of paragraph 6 state conclusions of law to which no responsive pleading is required.

7. Defendants admit that Plaintiff Glanz worked for CIGNA, primarily in Connecticut, from

August 8, 1988 to June 18, 2004. Defendants further admit that Plaintiff Glanz is entitled to certain benefits under the Plan. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiff Glanz's residence. The remaining allegations of paragraph 7 state conclusions of law to which no responsive pleading is required.

8. Defendants admit that some employees of CIGNA or its subsidiaries or affiliates earn and receive benefits under the Plan in Connecticut. The remaining allegations of paragraph 8 state conclusions of law to which no responsive pleading is required.

9. Defendants admit that CIGNA is a corporation organized under the laws of the State of Delaware, and that it is qualified to do business and does business in the State of Connecticut. Defendants deny the remaining allegations of paragraph 9.

10. Defendants admit that CIGNA functions as plan sponsor for the Plan and that the CIGNA Corporation Corporate Benefit Plan Committee is the named fiduciary for the Plan. Defendants deny that CIGNA is the plan administrator or the named fiduciary for the Plan. The remaining allegations of paragraph 10 state conclusions of law to which no responsive pleading is required.

Class Action Allegations

11. The allegations of paragraph 11 state conclusions of law to which no responsive pleading is required.

12. The allegations of paragraph 12 state conclusions of law to which no responsive pleading is required.

13. The allegations of paragraph 13 state conclusions of law to which no responsive pleading is required.

14. The allegations of paragraph 14 state conclusions of law to which no responsive pleading is required.

15. The allegations of paragraph 15 state conclusions of law to which no responsive pleading is required.

16. The allegations of paragraph 16 state conclusions of law to which no responsive pleading is required.

Statement of Facts

17. Defendants are without knowledge or information sufficient to form a belief as to the truth of whether Plaintiff Amara was born on April 3, 1950. Defendants admit that Plaintiff Amara worked for CGLIC from July 17, 1972 to August 10, 1995 and from September, 1998 to October 2003. Defendants further admit the allegations of the third and fourth sentences of paragraph 17. Defendants further admit that Plaintiff Amara was at her separation one of the NASD principals for the client services organization of CIGNA's Retirement and Investment Services, as well as a client executive in charge of accounts. Defendants deny the remaining allegations of paragraph 17.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of whether Plaintiff Broderick was born on March 12, 1944. Defendants admit that Plaintiff Broderick worked for CIGNA's individual life insurance business, which was sold to Lincoln National Life on January 1, 1998, and that she terminated December

31, 1997 from participation in the CIGNA Pension Plan. Defendants further admit that Plaintiff Broderick worked for a company that is affiliated with CIGNA from June 2000 until March 2004. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 18.

19. Defendants admit the allegations in the second and third sentences of paragraph 19. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 19.

20. Defendants admit that CIGNA adopted a cash balance pension plan, referred to herein as "Part B, " and that the Plan document was executed on December 21, 1998. Defendants further admit that CIGNA adopted an amendment freezing benefits for certain participants effective December 31, 1997. Defendants deny the remaining allegations of paragraph 20.

21. Defendants admit that effective January 1, 1998, certain categories of employees remained in CIGNA's prior pension plan, referred to herein as "Part A," which document speaks for itself. Defendants deny the remaining allegations of paragraph 21.

22. Defendants admit that Plaintiff Amara was moved to Part B pursuant to a rehire rule, but she was subsequently and retroactively moved to Part A. Defendants further admit that Plaintiff Broderick was moved to Part B pursuant to the rehire rule. Defendants further admit that both Plaintiffs were hired before 1989 and had a combination of age and service in excess of 45 points. Defendants deny the remaining allegations of paragraph 22; such allega-

tions purport to characterize the contents of the Parts A and B Plan documents, which documents speak for themselves.

23. Defendants admit that CIGNA moved Plaintiff Glanz to Part B on January 1, 1998. Defendants further admit that Plaintiff Glanz had 42 age and service points at the time the cash balance plan became effective. Defendants deny the remaining allegations of paragraph 23; such allegations purport to characterize the contents of the Parts A and B Plan documents, which documents speak for themselves.

24. Defendants deny the allegations of paragraph 24; such allegations purport to characterize the contents of the Part A and Part B Plan documents, which documents speak for themselves.

25. Defendants deny the allegations of the first and second sentences of paragraph 25. Defendants deny the remaining allegations of paragraph 25; such allegations purport to characterize the contents of the Part A and Part B Plan documents, which documents speak for themselves.

26. Defendants admit that CIGNA sent Plaintiff Amara a letter on or about December 14, 1995, a copy of which is attached to the First Amended Complaint as Exhibit 1. Defendants deny that CIGNA notified Plaintiff Amara on December 14, 1995 about her "accrued benefits." Defendants deny the remaining allegations of paragraph 26; such allegations purport to characterize the contents of Exhibit 1 to the First Amended Complaint, which document speaks for itself.

27. Defendants admit that CIGNA sent Plaintiff Amara a letter on or about February 23, 2001, a copy of which is attached to the First Amended Complaint

as Exhibit 2. Defendants deny that CIGNA decreased Plaintiff Amara's benefits under the Plan. Defendants deny the remaining allegations of paragraph 27; such allegations purport to characterize the contents of Exhibit 2 to the First Amended Complaint, which document speaks for itself.

28. Defendants admit that Plaintiff Amara questioned the amount of her retirement benefits and that Andrew Hodges, an actuary for CIGNA Retirement & Investment Services, sent an email dated April 20, 2001, a copy of which is attached to the First Amended Complaint as Exhibit 3. Whether ERISA Section 204(g), 29 U.S.C. § 1054(g), prohibits decreases in accrued benefits as a result of plan amendments is a conclusion of law to which no responsive pleading is required. Defendants deny the remaining allegations of paragraph 28; such allegations purport to characterize the contents of Exhibit 3 to the First Amended Complaint, which document speaks for itself.

29. Denied.

30. Whether the valuable early retirement subsidies or the free 30% joint and survivor benefit are protected against elimination by plan amendment under ERISA Section 204(g) is a conclusion of law to which no responsive pleading is required. Defendants deny the remaining allegations of paragraph 30; such allegations purport to characterize the contents of the Part A and Part B Plan documents, which documents speak for themselves.

31. Defendants deny the allegations of paragraph 31; such allegations purport to characterize the contents of the Part B Plan document and the Summary Plan Description ("SPD"), which documents speak for themselves.

32. Defendants admit that a plan specialist of CIGNA Retirement & Investment Services sent Plaintiff Amara a letter on or about July 6, 2001, a copy of which is attached to the First Amended Complaint as Exhibit 4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of paragraph 32. Defendants deny the remaining allegations of paragraph 32; such allegations purport to characterize the contents of Exhibit 4 to the First Amended Complaint, which document speaks for itself.

33. Denied.

34. Defendants deny the allegations of the second sentence of paragraph 34. Defendants deny the remaining allegations of paragraph 34; such allegations purport to characterize the contents of the Part B Plan document, which document speaks for itself.

35. Defendants admit that Plaintiff Amara was offered $1,833 per month under the terms of Part B, that her benefit was subsequently and retroactively increased, and that she is now currently receiving a monthly benefit of $4,302.25, with an age 65 reduction to $3,556. Defendants deny the allegations of the first and second sentences of paragraph 35; such allegations purport to characterize the contents of the Part B Plan document, which document speaks for itself. Defendants deny the remaining allegations of paragraph 35; such allegations purport to characterize the contents of the written benefits estimates, which documents speak for themselves.

36. Defendants deny the allegations of paragraph 36; such allegations purport to characterize the contents of the Part B Plan document, which document speaks for itself.

37. Defendants admit that on January 1, 1998, Plaintiff Glanz's Part B opening account balance was $10,005.70. Defendants deny that on December 31, 2004, Glanz's Part B account balance was $43,971.80. Defendants deny the remaining allegations of paragraph 37; such allegations purport to characterize the contents of the Part A and Part B Plan documents, which documents speak for themselves.

38. Defendants deny the allegations of paragraph 38, such allegations purport to characterize the contents of the Part A and Part B Plan documents and the Supplemental Declaration of Claude Poulin, which documents speaks for themselves.

Claim One: Conditioning Receipt Of Benefit Accruals Which Are Necessary To Satisfy ERISA's Anti-Backloading Rules Violates The Anti-Backloading Rules And The Nonforfeitability Standard.

39. Defendants admit that CIGNA's CEO, Wilson H. Taylor, approved Part B in 1997 and signed a copy of the Part B Plan document on or about December 21, 1998. Defendants deny the remaining allegations of paragraph 39; such allegations purport to characterize the contents of the Part B Plan document, which document speaks for itself.

40. Defendants deny the allegations of paragraph 40; such allegations purport to characterize the contents of the Part B Plan document, which document speaks for itself.

41. Defendants deny that "CIGNA" has interpreted Section 1.28. Defendants deny the remaining allegations of paragraph 41; such allegations purport

to characterize the contents of the Part B Plan document, which document speaks for itself.

42. To the extent that the allegations of paragraph 42 state conclusions of law, no responsive pleading is required. Defendants deny the remaining allegations of paragraph 42.

43. To the extent that the allegations of paragraph 43 state conclusions of law, no responsive pleading is required. Defendants deny the remaining allegations paragraph 43.

44. Defendants deny the allegations of the first and second sentences of paragraph 44; such allegations purport to characterize the contents of the Part B Plan document, which document speaks for itself. To the extent that the allegations of the third sentence of paragraph 44 state conclusions of law, no responsive pleading is required. Defendants deny the remaining allegations of paragraph 44.

45. The allegations of paragraph 45 state conclusions of law to which no responsive pleading is required.

46. The allegations of paragraph 46 state conclusions of law to which no responsive pleading is required.

47. Denied.

Claim Two: ERISA Requires That Benefit Reductions, Conditions On Receipt Of Additional Accruals And Other Disadvantages Be Disclosed In The Summary Plan Description.

48. The allegations of paragraph 48 state conclusions of law to which no responsive pleading is required.

49. Defendants admit that CIGNA distributed a SPD to participants in the Plan in October, 1998 and again in September, 1999. Defendants deny the remaining allegations of paragraph 49; such allegations purport to characterize the contents of the SPDs, which documents speak for themselves.

50. To the extent that the allegations of paragraph 50 state conclusions of law, no responsive pleading is required. Defendants deny the remaining allegations of paragraph 50.

Claim Three: The Rate of Benefit Accruals After 1998 Is Reduced Because of Age.

51. To the extent that the allegations of paragraph 51 state conclusions of law, no responsive pleading is required. Defendants deny the remaining allegations of paragraph 51.

52. To the extent that the allegations of the first and second sentences of paragraph 52 purport to describe every cash balance plan, Defendants lack knowledge or information, after reasonable investigation, sufficient to form a belief as to the truth of the allegations of the first and second sentences of paragraph 52. To the extent that the first and second sentences of paragraph 52 purport to characterize the terms of the Part A and Part B Plan documents, Defendants deny the allegations, as such documents speak for themselves. To the extent that the allegations of the third sentence of paragraph 52 state conclusions of law, no responsive pleading is required. Defendants deny the remaining allegations of paragraph 52.

53. Defendants deny the allegations of paragraph 53; such allegations purport to characterize

the contents of the Part B Plan document, which document speaks for itself.

54. Defendants deny the allegations of paragraph 54; such allegations purport to characterize the contents of the Part B Plan document, which document speaks for itself.

55. To the extent that the allegations of paragraph 55 state conclusions of law, no responsive pleading is required. Defendants deny the remaining allegations of paragraph 55.

Claim Four: CIGNA Did Not Give Participants Timely Or Adequate Advance Notice Of Benefit Reductions As Required By ERISA Section 204(h).

56. Defendants admit that Plan participants were notified about the terms of Part B and benefits thereunder. Defendants deny the allegations of the second sentence of paragraph 56; such allegations purport to characterize a written newsletter, which document speaks for itself. Defendants deny the remaining allegations of paragraph 56.

57. Defendants deny the allegations of paragraph 57; such allegations purport to characterize the contents of written SPDs and a deposition transcript, which documents which speak for themselves.

58. To the extent that the allegations of paragraph 58 state conclusions of law, no responsive pleading is required. Defendants deny the remaining allegations of paragraph 58.

59. Defendants admit that the rehire rule was amended as part of Part B, and that Part B was signed on December 21, 1998. To the extent that the allegations of the first sentence of paragraph 59 sug-

gest that there was a separate amendment amending the rehire rule, they are denied. Defendants deny the allegations of the second sentence of paragraph 59. Defendants admit that Part B Plan participants, including rehires, were notified of the terms of Part B and benefits thereunder, and that Defendants satisfied their disclosure obligations under ERISA. Defendants deny the remaining allegations of paragraph 59.

60. To the extent that the allegations of paragraph 60 state conclusions of law, no responsive pleading is required. Defendants deny the remaining allegations of paragraph 60.

Claim Five: CIGNA Has Reduced Previously Earned Benefits In Violation Of ERISA Section 204(g)'s Anti-Cutback Rule.

61. Defendants deny the allegations of paragraph 61; such allegations purport to characterize the contents of written documents, which documents speak for themselves. To the extent that the allegations of paragraph 61 state conclusions of law, no responsive pleading is required. Defendants deny the remaining allegations of paragraph 61.

62. Defendants deny the allegations of paragraph 62; such allegations purport to characterize the contents of written documents, which documents speak for themselves. To the extent that the allegations of paragraph 62 state conclusions of law, no responsive pleading is required. Defendants deny the remaining allegations of paragraph 62.

Prayer For Relief

Defendants deny that Plaintiff is entitled to any relief or damages, including the relief described in paragraphs A-D of the Prayer for Relief.

WHEREFORE, Defendants respectfully request that the Third Amended Complaint be dismissed with prejudice, that judgment be entered in their favor, and that Defendants be awarded the costs of this action, attorneys' fees and such other relief as this Court deems appropriate.

FIRST DEFENSE

The Third Amended Complaint fails to state any claim upon which relief can be granted.

SECOND DEFENSE

Plaintiffs and Class members' claims are barred in whole or in part by the applicable statutes of limitations.

THIRD DEFENSE

Plaintiffs and certain Class members have failed to exhaust administrative remedies.

FOURTH DEFENSE

Plaintiffs and Class members are not entitled to relief beyond that which is authorized by ERISA Section 502(a)(3).

FIFTH DEFENSE

Plaintiffs and Class members are not entitled to a jury trial on any of their claims.

SIXTH DEFENSE

The claims of Plaintiffs and certain Class members' claims are barred by releases signed at the conclusion of their employment with CIGNA.

SEVENTH DEFENSE

Some of Plaintiffs' Claims are barred because, to the extent CIGNA's disclosures were inadequate and

Plaintiffs can prove "likely prejudice," this constituted harmless error.

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANICE C. AMARA, GISELA R. BRODERICK, ANNETTE S. GLANZ, individually, and on behalf of others similarly situated,	:	
Plaintiffs,	:	3:01 CV 2361 (MRK)
v.	:	
CIGNA CORP. and CIGNA PENSION PLAN,	:	
Defendants.	:	March 10, 2006

STIPULATION AND JOINT MOTION ON CONDUCT OF DISCOVERY AND TRIAL ON "LIKELY PREJUDICE" AND "HARMLESS ERROR" ISSUES CONNECTED WITH SECOND AND FOURTH CLAIMS FOR RELIEF

Plaintiffs and Defendants, by and through counsel, hereby stipulate to, and jointly move the Court to approve, the following procedures to govern discovery and trial of the "likely prejudice" and "harmless error" issues connected with the Second and Fourth Claims for Relief based on the alleged violations of ERISA's Summary Plan Description ("SPD") rules and its Section 204(h) notice requirements. See *Frommert v. Conkright*, 433 F.3d 254, 266-67 (2d Cir. 2006); *Weinreb v. Hosp. for Joint Diseases Orthopaedic Inst.*, 404 F.3d 167, 171 (2d Cir. 2005); *Burke v.*

Kodak Ret. Income Plan, 336 F.3d 103, 112-13 (2d Cir. 2003), *cert. denied*, 540 U.S. 1105 (2004).

1. Plaintiffs will select 8 class members (in addition to Janice Amara and Gisela Broderick) from whom discovery may be taken on the issues of "likely prejudice" or "harmless error." Defendants also will select 8 persons from among the absent class members in this case. Each party will select two class members from each of the following four categories:

(a) Tier 1 rehires with over 45 age and service points as of the conversion;

(b) Other Tier 1 participants who were converted to cash balance;

(c) Tier 2 participants with less than 55 age and service points; and

(d) Tier 2 participants with 55 or more age and service points.

2. Subject to the numerical limits in the Local and Federal Rules of Civil Procedure, Defendants will serve interrogatories and document requests through class counsel on the 8 class members who Plaintiffs select, namely, Annette Glanz, Bruce Charette, Robert Upton, Barbara Hogan (who were identified in the Supplemental Declaration of Claude Poulin served on January 3, 2006), plus four others to be identified on or before March 15, 2006. Defendants' interrogatories and document requests may be served on or before March 17, 2006. Defendants may depose some or all of these 8 class members and Ms. Broderick. Defendants will limit the duration of their questioning to two hours, except for Ms. Broderick and Ms. Glanz, who may be deposed for up to four hours. If necessary, Defendants may request additional time from the Court. The depositions will

be scheduled at times and places convenient for the deponents.

3. The parties agree that any interrogatories and document requests directed at the 8 absent class members selected by the Defendants shall be served on class counsel on or before March 17, 2006 and accompanied by a preliminary statement describing the lawsuit and the foundation for responses. The 8 absent class members selected by Defendants will be asked to respond to the questions and document requests within 30 days of service.

4. Consistent with *McCarthy v. Paine Webber*, 164 F.R.D. 309, 313 (D. Conn. 1995), and *In re Publication Paper Antitrust Litig.*, 2005 WL 1629633, *1-2, 2005 U.S. Dist. LEXIS 13681, *5 (D. Conn. July 5, 2005), Plaintiffs propose that there be no default of those who do not respond and that any depositions be based on whether either party expects to call the individual to testify based on his or her written responses and be limited in duration as described above. The Plaintiffs further propose that any document requests not ask for tax returns or other personal financial records where the information is accessible to the Defendants through its own records, e.g., from W-2's, payroll, benefits, disability, and health records, or where it may intrude on the privacy of spouses and other family members, absent a "strong showing of a particular need" and that the request is "narrowly tailored" to that particular need. Id.[1]

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[1] Plaintiffs have agreed that if there are any documents which Defendants do not presently have which they believe will establish a "strong showing of particularized need" to support

5. Defendants disagree with the limitations on discovery of absent class members in Paragraph 4 and with the implications of any individual's failure to respond to discovery. Defendants submit that they are entitled to the financial records of class members who the Plaintiff class maintains were likely prejudiced with respect to financial matters, consistent with discovery conducted in *In re Unisys Retiree Medical Benefit "ERISA" Litigation*, 242 F.3d 497 (3d Cir. 2001), during which similar issues were litigated and discovery was approved by United States District Judges Edward N. Cahn and Bruce W. Kauffman. Defendants will submit copies of the written discovery served on absent class members in that case, along with any related orders approving that discovery, to Plaintiffs' counsel on or before March 17, 2006. Similarly, Defendants submit they are entitled to other documents to the extent such documents are relevant to the defense of harmless error. Defendants also believe they are entitled to take discovery about any releases executed by these individuals. Lastly, Defendants submit that the implications for any individual's failure to respond to discovery should not be decided now and should depend on the specific facts and circumstances at issue.

[Footnote continued from previous page]

their position on discovery of absent class members, Defendants may informally seek such documents from the class members listed in "Exhibit A" to the April 3, 2003 letter from Defendants' counsel to Mr. Moukawsher, so long as copies of the requests and any responses or documents produced by those class members are supplied to class counsel by March 17, 2006. A copy of the April 3, 2003 letter is attached.

6. Because the parties have been unable to resolve the disputes described in Paragraphs 4 and 5, the parties agree to submit this dispute for resolution by the Court by filing letter memoranda and holding a conference call with the Court to discuss and resolve these issues. Absent class members may postpone responses to interrogatories and document requests and any resulting depositions until resolved by the Court.

7. For trial, Plaintiffs shall select no more than 10 class members (in addition to Ms. Amara and Ms. Broderick) from among the class members who participate in discovery to testify on the issue of "likely prejudice" and be subject to examination on the defense of "harmless error." Defendants may select and call any other persons who participate in discovery as adverse witnesses.

8. The parties expect that the trial will result in a final judgment on the issues of likely prejudice and harmless error for all class members who testify. The Court will decide whether the trial results in a final judgment on these issues for all other class members.

9. Both parties anticipate that the Court will be able to issue findings of fact and conclusions of law as to all other issues tried by the parties on a class-wide basis.

10. Following the trial, the parties will meet with the Court to confer on:

(a) The appropriateness of an interlocutory appeal or Rule 54(b) certification;

(b) The need for, and procedures for, any individualized hearings on likely prejudice or harmless error, and any related discovery; and

(c) Whether a settlement conference would be worthwhile.

11. The current discovery deadline will be extended to May 15, 2006, conditioned on Defendants taking no more than four depositions after May 1, 2006, and requesting no further extension of discovery. The current Scheduling Order shall be revised so that the Plaintiffs' trial memorandum, proposed findings of fact and conclusions of law, trial exhibits, and trial brief are due May 30, 2006; the Defendants' trial memorandum, findings of fact, conclusions of law, trial exhibits, and trial brief are due June 20, 2006; and the Plaintiffs' reply memorandum is due July 18, 2006, after which the case shall be trial ready. The parties agree to forego filing motions for summary judgment, so there is sufficient time to conduct the discovery described above. The parties will also forego filing any motions to exclude experts until their respective trial memoranda are due.

WHEREFORE, the parties request that their Stipulation and Joint Motion be approved by the Court.

* * *

April 3, 2003

VIA FACSIMILE & FIRST CLASS MAIL

Thomas G. Moukawsher
Moukawsher & Walsh, LLC
328 Mitchell St.
Groton, CT 06340

Re: Amara v. CIGNA
3:01-CV-2361 (DJS)

Dear Tom:

There are a number of individuals who fall within the class definition certified by the Court who are essential to Defendants' ability to present their case in this matter. In order to ensure that Defendants can discuss this matter freely with these individuals, Defendants would like to exclude these individuals from the class. Accordingly, we have prepared the attached Stipulation identifying these individuals by name and job title. As reflected in the Stipulation, despite the fact that these individuals will not be in the class, Defendants will make available to these individuals the same remedies, if any, that are afforded to the class through this litigation.

Please let me know if this Stipulation meets with your approval or if you have any questions.

Sincerely,

Jeremy P. Blumenfeld

* * *

Exhibit A

Name	Job Title
Robert Abbott	Senior Legal Assistant
John Arko	Director, Total Retirement
Douglas Battaglini	Systems Consultant
Justin Coffin	Editor, Corporate Publications
Stephen Comkowycz	Senior Pension Consultant
Sandra Daukaus	Business Systems Consultant
Robert Flanders	Assistant Director, Benefits
Denise Hill	Vice President, Corporate Relations
Beth Hollfelder	Business Systems Specialist
Cheryl Hurly	Assistant Director, Benefits
Cheryl Koda	Director, DB Production Services
Todd Lane	Assistant Director, Corporate Publications
Diane Lastinec	Team Leader, Benefits
Sandra Lau	Retirement Benefits Consultant
Ellen Matthews	Assistant Director, Benefits
Gerald Meyn	Vice President, Employee Benefits and Health Management
Lorraine Morris	Manager, Account Manage-

	ment Services
John Popsun	Associate/Transformation
Wendell Potter	Vice President, Chief Corporate Spokesperson
Barbara Rodegher	Manager, DB Service Center
Francine Smith	AVP, Signature Benefits Services
William West	Director, Corporate Publications
Anne Coleman	Enrolled Actuary
Helen Frye	Senior Vice President, Human Resources
Amy Kamstra	Claims Manager
Leona Utter	CIGNA Temp/Encore Associate

Trial Transcript Excerpts

[Page 15]

* * *

JANICE C. AMARA

having been called as a witness, was first duly sworn and testified on her oath as follows:

THE CLERK: Please be seated. Please state your name for the record, spelling your last name, and give us your business address.

THE WITNESS: My name is Janice C. Amara, A-M-A-R-A; and my home address, I'm retired, is 414 Briarwood Lane, Middletown, Connecticut, 06457.

DIRECT EXAMINATION

BY MR. BRUCE:

Q Good morning, Ms. Amara.

A Good morning.

Q Would you mind telling us when you were born and give us some of your educational background?

A I was born on April 3rd, 1950. I received a bachelor's degree in history at Central Connecticut State College and I received a JD, a law degree, from the University of Connecticut in 1986.

Q Could you tell us a little bit about your work history with CIGNA?

A Yes, I was hired in 1972 and I worked continuously at CIGNA until 1995. I started working in the Reinsurance ***

* * *

[Page 27]

Q Was there any discussion of benefit reductions?

THE COURT: You can ask that, that's proper.

MR. BRUCE: Yes, your Honor.

A Please repeat the question.

THE COURT: Was there any discussion of benefit reductions.

A No.

Q And how about a Summary Plan Description, was there a Summary Plan Description that you could review at that time when you were being interviewed?

A No, I was told that one was not available.

Q And did you later receive any written materials about the cash balance plan after you were rehired by CIGNA?

A I did not receive any written materials about the cash balance plan. Later, they were available online but I did not receive a copy.

Q Okay.

A When I say later they were available online, I'm referring to 1999.

Q Okay. Will you look at Exhibit 8 under tab 3? There's another one under tab 4. Do you believe that you ever received those summary plan descriptions?

A No, I did not receive this Summary Plan Description, in paper form.

Q There are two versions out there under tab 3 and tab 4. **[Page 28]** You don't believe that you received either one in paper form?

A I did not receive these in paper form. I do not believe that I did.

Q But did you see one of them by another means?

A Through the intranet.

Q And do you know when CIGNA started making written communications available through the intranet?

A My recollection is that it was 1999.

Q Do you think --

A My recollection is it was the latter half of 1999, that it was made available on the intranet.

Q So was there a way to print out documents that were available on the intranet?

A Yes, I could have printed it out.

Q You reviewed it online?

A I reviewed it online. I did not print it out.

Q And what do you recall about your review of this document?

A Well, --

THE COURT: Which one?

Q You are referring to the one under tab 4?

A Yes, the one under tab 4, which is --

MR. MOUKAWSHER: Your Honor, with the binder problem, did you want a copy?

THE COURT: Sure. Go ahead.

[Page 29]

A When I saw this online, I skimmed through it in part and then there were parts that I focused on. So for example, I really skimmed through the vesting section because I knew that I was fully vested and what I wanted to make sure, of course, is that my benefits were growing, steadily growing.

So I looked at -- now I'm looking at what's down here as page D 00624 on my written copy and it says "how your pension grows," and so I looked at that area.

Q What is the heading of the area that you are looking at?

A "How your account grows." And there was a section here that talked about -- well, it starts out by saying: An account is set up in your name to establish an ongoing benefit credit and each dollar's worth of credit is a dollar of retirement benefits paid to you.

And then I looked down on benefit credits and it says for each year, you earn a year of credited service and I looked and I believe that I wanted to see what my benefit would be so I looked down and it said my points, my age plus service, was 65 so I would receive a credit, percents down here was 7 percent below the integration level at 8-1/2 percent above.

Then it talked about the interest credits that in addition to benefit credits, which are based on my pay, that I would also be receiving interest credits which would be based on the account balance, and there was a formula to determine ***

* * *

[Page 34]

MR. COSTELLO: Objection, your Honor. Leading.

THE COURT: Well, have you ever heard the term wearaway.

THE WITNESS: Yes, I have heard the term.

THE COURT: When did you first hear that term?

THE WITNESS: I first heard of the term wearaway as it relates to my benefit when I went to a going away party for some people who had been laid off on CIGNA retirement, and that was in September of the year 2000, and I was talking with Mark Lynch, who is a senior level actuary in the retirement division and I've known him for a long time, we were talking about the retirement, how retirement benefits were affected for the people who were being laid off and if they came back to work versus if they could get a job in another division.

And at that point, Mark said to me: Jan, you would be really sick if you knew the wearaway factors they were using with your benefit.

And --

Q Did you know what wearaway meant at that point?

A I had a very basic understanding that wearaway was a period of time when no benefits would accrue. It was a very basic understanding.

Q And you mentioned you were friends with Mark Lynch in addition to being work colleagues?

A Long-term work colleagues and acquaintances. We weren't [**Page 35**] personal friends.

Q Okay. Do you recall what the -- you mentioned a little bit what the context was where he would say that to you?

A Well, we were talking about the fact that these people who had been laid off had 30 days, they had a 30-day notice and if they could get a job within CIGNA Corporation, within the 30-day period, they would stay in Plan A.

If, instead, if they did not and later returned to CIGNA, then they would be in the cash balance plan and so we were talking about the importance, if you will, of getting a job within 30 days so that they would never -- if they ever came back to CIGNA, they would never be moved to the cash balance plan.

Q So he was aware that you had been rehired to CIGNA after a long initial period of service?

A That is correct.

Q And what was your reaction to Mr. Lynch's statement to you?

A I was very upset and I was very, very concerned because I knew that, I knew that Mark is a very knowledgeable individual and probably could possibly have been involved in trying to figure out, you know, some of the calculations or what to do, but I know that Mark was a very senior level person and it was of great concern to me. It put me on notice.

Q Did you talk with him further about that?

* * *

[Page 45]

THE WITNESS: More than doubled, any way you looked at it.

Q Do you still have binder 2? Look at Exhibit 46. Is Exhibit 46 in binder 2, is that the recalculation of your benefits under the Depenbrock decision?

A Yes, it is.

Q And can you find the relevant numbers in there?

A Yes, the relevant numbers are $4,302 a month beginning at age 55 and $3,556 a month beginning at age 65.

Q Okay. And you signed a release when you left CIGNA in October of 2003, didn't you?

A Yes, I signed a release. Yes.

Q And was that release raised as an issue in terms of your recalculation under the Depenbrock decision?

A No.

Q Ms. Amara, what do you believe that you could have done if, when you were being interviewed by CIGNA in 1998, if CIGNA had told you there was going to be a wearaway period where you wouldn't have earned additional benefits?

A I could have negotiated for a higher salary. The salary offer was put together looking at different components, and pension wasn't one of those components. I could have gone -- I could have looked and talked to other employers, or I could have stayed at Hooker & Holcombe.

Q Were you in any conversations with other employers?

[Page 46]

A I spoke with someone that I knew at Mass. Mutual who worked in the compliance division of their pension department and I knew her from industry conferences and I asked if she thought that there might be something fitting my experience and education, et cetera, at Mass. Mutual.

And she said that she thought that very much so and that she would talk to her manager and get back to me and she called me back and said, yeah, we would love to have you apply.

And as I was doing this thinking, I decided that I would apply at CIGNA and because of my history with CIGNA.

Q How did your pay, your direct pay, at CIGNA compare with what you were receiving at Hooker & Holcombe?

A My direct pay went down about $5,000. I did receive a signing bonus and I knew the salary wasn't static, but I did take a pay cut of basic compensation.

Q And who decided on the signing bonus?

A I was offered a signing bonus when I -- when the offer was made to me and so it was simply offered. I don't know who made that decision.

Q Okay. Thank you.

THE COURT: Mr. Costello.

MR. COSTELLO: Your Honor, I'm not sure I'll need it but plaintiff's deposition transcript is in Defendants' Exhibit 550, if you need to reference that.

* * *

[Page 54]

indicates to you the annual benefits you have earned at retirement, as well as the projected benefits you could earn if you worked through age 65, correct?

A It appears to be correct, yes.

Q And your understanding was that in each of these exhibits, 560 through 563, the reference to pension plan was a reference to the cash balance plan?

A I took this to be my retirement benefits.

Q Whether it be under the cash balance plan or a minimum benefit you would have received based on what you earned under Part A?

A A protected benefit, yes.

Q Okay.

MR. COSTELLO: Bear with me, your Honor, I'm trying to cut through some of this so I can shorten it up.

Q Ms. Amara, there was nothing --

MR. COSTELLO: Strike that, your Honor.

Q You testified that you actually, I believe you said, skimmed through portions of the Part B SPD at some point in 1999, is that right?

MR. BRUCE: Objection, your Honor. Mischaracterized the testimony.

THE COURT: I'm not sure it did, but she can tell him if it's wrong.

Q You testified, in 1999, you skimmed through some portions **[Page 55]** of the Part B SPD online.

A In 1999, what was available online, which I believe was an SPD, I looked at it, I skimmed through some parts that didn't pertain as much to me and I was -- I looked more closely at other parts.

Q I understand. You skimmed through some portions, read through some portions carefully, is that right?

A (Nodding head.)

Q Is that correct?

A Yes.

Q And there is nothing that you refrained from doing based on the contents of the Summary Plan Description, is there?

A There was nothing that I refrained from doing -- I'm trying to understand your question. Do you mean that --

Q Ms. Amara, is there anything that you did not do specifically because of something you read in the SPD or any other plan documents?

A I'm not trying to be difficult; I'm trying to understand. Is there anything that I didn't do because of what I read?

Q Yes.

A I'm not sure.

Q Do you remember when you were asked this question during your deposition? Your deposition was on November 22nd, 2002, is that right, Ms. Amara?

A Yes.

[Page 56]

Q And my colleague, Mr. Blumenfeld, asked you questions during the deposition?

A Yes.

Q And you were under oath, so you presumably tried to answer those questions truthfully, is that right?

A I certainly did.

MR. COSTELLO: Counsel and your Honor, deposition page 143, line 22.

Q Ms. Amara, do you remember when Mr. Blumenfeld asked you this question, this series of questions, and you gave these answers:

Mr. Blumenfeld, question: Is there anything that you did not do specifically because of something you read in the Summary Plan Description or in any other plan documents?

At the top of page 144, answer: I don't think so.

Was that your testimony under oath in November of 2002?

A If you say it is, then it is.

Q And similarly, Ms. Amara, there is no action that you have not taken based on the contents of the Summary Plan Description, is there?

A There's no action that I have taken, based --

Q No, that was the original question. We clarified that with your deposition. There is no action that you have --

MR. COSTELLO: Strike that, your Honor.

[Page 57]

Q Similarly, there is no action that you have taken based on the contents of the Summary Plan Description?

A There's a lot of negatives, the way that you are stating it, and I'm confused. I would say I think that's right but I am confused with the negatives.

Q Right. Let me ask the question again: There is no action that you have taken in your life based on the contents of the Summary Plan Description for Part B?

A I would -- that sounds right.

Q Now, you said you signed a release at the time you left CIGNA, is that right?

A Yes.

Q And did you have an opportunity to consult with Mr. Bruce about that release?

A Yes.

Q Before you signed it?

A Yes.

Q You did?

A Yes.

Q And no CIGNA attorneys, in-house or anyone from Morgan Lewis here at counsel table, asked you to sign that release, did they?

A No.

Q And no CIGNA attorneys, in-house or anyone here at counsel table, ever discussed the release with you, did they?

* * *

[Page 68]

* * *

BRODERICK GISELA

having been called as a witness, was first duly sworn and testified on her oath as follows:

THE CLERK: Please be seated. Please state your name for the record, spelling your last name and give us your address.

THE WITNESS: My name is Broderick, Gisela B-R-O-D-E-R-I-C-K, G-I-S-E-L-A; currently working in Enfield at 100 Bright Meadow Boulevard.

MR. MOUKAWSHER: Your Honor, the next witness is the named plaintiff Gisela Broderick and I've taken the liberty of placing on the bench the binders for all of the exhibits that ***

* * *

[Page 82]

back to CIGNA.

Q Okay. Prior to this time, was there any legal prohibition on your trying to go back to CIGNA?

A Yes, there was. I did not attempt to go back to CIGNA for two years because contractually, when the sale took place, Lincoln Financial promised or signed a document that said that they would not hire any – I'm sorry, I said that backwards, didn't I -- CIGNA said they wouldn't hire away any of the talent that had gone with the sale. So CIGNA would not hire me for two years.

Q Okay. Was the two years up by the time you were preparing to or considering returning to CIGNA?

A Yes, it was two-and-a-half years.

Q Why did you want to return to CIGNA?

A My primary motivation was -- well, I could have stayed with Aetna because I was not in any danger of losing my job. I just was not happy with the content of my job, it had not been what I signed up for.

But I was motivated to go back to CIGNA because I had some health issues. I didn't want to necessarily work another five years with Aetna and retire -- not that I was planning to at that point -- but I wanted to have the option and I thought I had more to gain by going back to CIGNA and being reinstated in my pension.

Q And did you ultimately interview for a job at CIGNA?

[Page 83]

A I called staffing. They thought I would be a good fit. They arranged for an interview, yes.

Q Who did you interview with?

A I interviewed with the hiring manager. Her name is Bev Gordon.

Q During your discussion of your possible return to CIGNA at that time, did you discuss pension issues with Bev Gordon?

A I asked -- I told her I wanted to be reinstated in the pension plan that I was in when I left and she just said that that was not her area of expertise, that I should contact the benefit line.

THE COURT: Could we have a time frame?

Q What month and year were you having this interview?

A I was having this interview in the May/June time 2002.

THE COURT: 2002?

THE WITNESS: 2002, yes.

Q When you interviewed with Ms. Gordon, you testified she sent you to the retirement benefits people. Did you follow up on that?

A Yes, I did. I called them, I had a list of questions, one of them was related to my 401K. I had not moved my 401K when I left CIGNA in 1997, so it was still sitting there and I asked if I could resume doing that. I specifically asked things related to life insurance and medical, would I be covered as soon as I came back, no waiting period, no [**Page 84**] underwriting, because I had a preexisting condition.

And then I concentrated mostly on my pension because that was one of the motivators for my coming back to CIGNA. I asked if I would get my service years back and I was told, yes, you would get your service years back and I was told that I would have an adjusted date of January, 1983, taking into consideration that I had been away for two-and-a-half years, so that would be an adjusted service date.

Q And what did the person tell you about reinstatement?

MR. COSTELLO: Objection, your Honor, leading. She said nothing about reinstatement.

MR. MOUKAWSHER: She testified she asked about putting back in the plan.

THE COURT: She asked if she would get her service years back.

MR. COSTELLO: Leading.

MR. MOUKAWSHER: I'll withdraw it.

THE COURT: Okay.

Q What else did you discuss with the benefits rep?

A I discussed with the benefits person that I was interested in being reinstated into the pension plan and the person said that I would get my service years and that I would have an adjusted service date.

Q Okay. And what were you asking? What did you mean when you said reinstated in the plan? What plan were you talking?

[Page 85]

A When I was asking these questions, because of my age, because of my service, they would be adjusted back to '83 and because I left in Plan A, I assumed that I was being reinstated to Plan A.

Q Did the benefits representative discuss anything about a rehire rule that put people into the cash balance plan?

A No, and I was not aware of the rehire rule.

Q Did the benefits representative tell you that you would be in the cash balance plan?

A No, those words were not used.

Q After you made the phone call and before you accepted the employment at, reemployment at, CIGNA, did you do anything else about the pension or was that it?

A No, but I did consider the fact that I was taking a very large cut in salary but I thought that I would be regaining my service years and be under the pension plan, and I knew that that was a good thing for me.

Q Quantify the cut in pay, if you can.

A I accepted a job that paid me $14,000 less than what I had been making at Aetna.

Q Do you remember what you were making at Aetna?

A I was making $104,000, and I accepted a job for $90,000.

Q You accepted a job at CIGNA. When did you start? What month and year, if you recall?

A It was the end of June. I don't recall the exact date ***

* * *

[Page 103]

Q Is that what you were comparing, that number this number?

A Yes.

Q Okay. And did you do anything else about your dissatisfaction with that number at the time?

A This was 2001, this was 3/31/2001. I don't think I took any action at this point.

Q This would have been the time which you were having your exchange with Mr. Belts, wouldn't it?

A Yes, it was. Yes.

Q Okay. Now, look at the documents that are at the tabs that follow that, there's one at 583, that's P 2393, and that says CIGNA pension statement for 2001. Is that a similar statement?

A It's a similar statement but it's for the full year of 2001. December 31st, 2001.

Q And did you receive others like it in the following years? Showing you tab 584. Does that appear to be?

A Yes.

Q Okay. And so too with 585, have you seen 585 before?

A Yes.

Q All right. And let me stop for a moment on 585. You see in the columns on Exhibit 585, there's a column that says opening balance as of January 1, 2002, $165,994.89. Below it, it says that benefit credits $9,057.50, below that interest **[Page 104]** credits of $7,637.06 and a total of $182,689.45.

Above all that, it says you are fully vested in your pension benefit, the benefit is available after termination of employment.

When you read this, what did you think was going to happen to this balance, the benefits credits and interest credits, when you retired? What did you think was going to happen to that money?

A I thought that was money that was going to be added to my pension benefits, that I was accruing additional money in what I already had vested.

Q Did you get any of it?

A No, I didn't.

Q And did you make similar assumptions when you read the other calculations for the later -- for the earlier and later years?

A Yes.

Q Did you assume you were actually going to get the money that was on those pages?

A I was assuming that my account was growing by that amount and that that would, in fact, add to the benefits I had already accrued as of 1997.

Q And did they add to the benefits that you already accrued as to 1997 when you went to retire?

A No.

[Page 105]

Q Did you get any of that money?

A No, I didn't get any of that money.

Q I'm going to show you a document that's at Plaintiffs' Exhibit 99 and that's in volume 4 of the plaintiffs' exhibits, I'll hand it to you, volume 4, tab 99. I'll ask you to take a look at the documents that are there and tell me whether you recognize them?

A Yes, I recognize them.

Q And what are they?

A They are the total compensation reports sent to all the employees in the spring following the year that the report is for, so 2001 total compensation report would have been prepared in probably March or April is when we usually receive them.

Q What's the idea, as you understood it as an employee, of giving you this total compensation report?

A It was to show you all the benefits that you were getting from being a CIGNA employee.

Q Does it add them all up and give you a total at the end?

A Yes, it does.

Q Now let me direct your attention to some of the language in this document. Down at the bottom, it says value from your CIGNA benefits. The amount that CIGNA contributes to the cost of your benefits and other services is a significant part of your total compensation.

[Page 106]

I'll direct your attention below that where it says -- there are columns and one of them says CIGNA pays, and on the left there's a column that matches it that says pension plan and if you go through it, it shows pension plan you pay zero, CIGNA pays $7,617, total value $7,617, and then that's added into the figure for your total compensation.

When you read the language that said CIGNA was paying $7,617, and they added it into your total compensation figure of $126,802, what did you think was going to happen to that money that CIGNA said it was paying when you went to retire?

A I assumed that that was money that was going to be paid to me when I retired.

Q Did you get any of it?

A I took it on face value.

No, I didn't.

Q So too you received other versions of this as well. If you turn the page to P 1278, the next docu-

ment, is that your current compensation figure for 2002?

A Yes, that was my figure for 2002.

Q And this is in the same format as the other document so there's a line here that says under value from your CIGNA benefits, it's a significant part of your total compensation, and you follow the lines again, it says pension plan, it says you pay zero, CIGNA pays $16,757 and then they put that into **[Page 107]** the total figure of your total compensation of $166,256.

When you saw the $16,000 that CIGNA said it was paying you, what did you think was going to happen to that money when you went to retire?

A I assumed that that was money that was going to be added to my benefits when I retired. This was additional money that I was earning under this plan.

Q Did you get any of it?

A No, I didn't.

Q In looking at those documents, did these total compensation documents, did they appear to in any way suggest that there might be circumstances under which you wouldn't get the money?

A No, not at all. This was all presented as very positive.

Q All right. Let me show you another document now that is in I believe the first binder. I'll take that one away, the first plaintiffs' binder. And I'm going to direct your attention to the tab that just had the 8 on it as opposed to the one that says Exhibit 8 on it, the one that says tab 8 and then within

that, there's a tab that says Exhibit 4, No. 8, Exhibit 4 on it.

I'm going to ask you to look at the document there that says: "Summary Plan Description, the CIGNA pension." Take a look through the document and tell me whether you recognize that.

[Page 108]

A Yes, I recognize it.

Q And did you see that during the time you were employed by CIGNA?

A I saw that during the second time that I came back to CIGNA.

Q Do you remember about when you saw it?

A I don't think I had a copy of it in 2000. I may have looked at it online 2001, 2002, I really can't recall, but I remember asking for a hard copy at some point. You could send away to some printing service and get a hard copy.

Q And did you get a hard copy?

A Yes, I did.

Did you read through that document once you got it?

A Yes, I did.

Q And was reading through that document part of your attempts to find out what the impact of the change was on you?

A Yes, it was. Now that I was in Plan B, I wanted to know what was happening.

Q And what did you take away from reading that document?

A I didn't take away any way to assess the impact. It just gave the rules of conversion. May I take a minute?

Q Of course.

A I think I concentrated on D 00027.

Q What on that page were you paying attention to?

A It was a very general statement that if you were in the ***

* * *

[Page 116]

Q Did they give you a lump sum to make up for what you would have begun commencing from 2004?

A Yes, I received a lump sum and in addition, from that point forward, I was receiving, I am receiving, $110 more to include that free 30 percent annuity.

Q Okay. When CIGNA paid you in 2006 the lump sum for not having given you the free survivor annuity back to 2004, did they pay you interest on that amount, too?

A Yes, they did.

Q Okay. Now, if you had known at the time you were considering leaving Aetna to come back to CIGNA, if you had known what you know about the cash balance plan, would that knowledge have had any affect on your decision?

A It certainly would have.

Q What affect would it have had?

A I don't think that I would have accepted a cut in salary because I was coming back for no gain in my benefits, my pension benefits. I most likely would have stayed with Aetna because that was a real option for me and in five years, I could have had a pension at Aetna.

Instead, I came back to CIGNA and gained nothing from my years. I didn't accrue any additional benefits even though it seemed like I was.

Q Okay. Let's say, though, you didn't know that before you took the job at CIGNA, you came back, you took the job at **[Page 117]** CIGNA and at some point during your interchange with Mr. Belts and Mr. Arko they explained to you, look, you are not accruing any new benefits under this plan, that could happen for years, and it's a very significant reduction in your benefits over what you would have had under the old plan, would that have caused you to do anything?

A I think I would have looked for opportunities elsewhere. I certainly could have gone back to Aetna because they were hesitant to let me leave and I have a lot of professional friends and good network that I don't think I would have had any trouble finding employment elsewhere. There was no point being at CIGNA if I was not adding to my pension.

THE COURT: Just so that I understand things, I'll confess to some confusion on some of this, the terminology used in terms of questions of lower benefits and the like. Is it the defendants' position that Ms. Broderick or Ms. Amara actually received less benefits than they would have received under the Plan A as of January 1, 1998? And if so, what are the things that make it smaller? Do you get my point?

MR. MOUKAWSHER: Are you asking me, your Honor?

THE COURT: Yes.

MR. MOUKAWSHER: I'm sorry, you said defendants. Let me make a clear distinction here, your Honor.

THE COURT: I understand the point of no additional benefit for the five years of working, and that could be ***

* * *

[Page 133]

MR. COSTELLO: Through the witnesses.

MR. MOUKAWSHER: Okay. You don't want to hear anything else.

THE COURT: After the witness gets off, if you want a bit of an argument. But these questions about vested closing balances, and I would like to know whether or not somebody could opt to get that and whether that would include all of the credits from the time one got onto Plan B plus your Plan A amount. I understand the monthly benefits don't work that way.

MR. COSTELLO: That's right, your Honor. We would be happy to entertain that but I think not in the presence of the witness.

THE COURT: Right, I understand.

Q Ms. Broderick, getting back to my question, from what I heard you testify, you say that you believed that what you were entitled to was the amount in your closing balance plus what you had accrued as of December 31st, 1997?

A No, I didn't believe that. I only believed that with this amount, where I'm looking at the statement from December 31st, 2004, it's Exhibit 587, because that's the closest to the time that I took a distribution, I believed that that amount would not give me the monthly benefits that I would have expected had I stayed in Plan A. If I had stayed in Plan A, I would have a benefit that would be greater than the **[Page 134]** benefit that this amount could buy me.

I know enough about mathematics to know that if I were to take a lump sum of $209,531, that doesn't necessarily compare -- and I was unable to compare much because I did not get the answers that I was looking for -- but the present value of future benefits, it just wouldn't compare.

Q Sure.

A I would be getting a whole lot less if I took a lump sum, so I knew that was not beneficial to me.

Q Sure, and you knew that because of your knowledge of mathematics.

A I know what present value of future benefits means, yes.

Q I understand. So you are not claiming then that you understood your closing balance to be what you would have gotten on top of your accrued benefit?

A No. No.

Q I understand. Now, CIGNA also provided you with total compensation reports, correct?

A That's correct.

Q You were alluding to them a little earlier --

A Yes, I got mixed up.

Q -- when you were confused. That's understandable, a lot of paper here.

The first of these that we have in the record is at Defendants' Exhibit 589. Do you have that, Ms. Broderick?

[Page 135]

A Yes, I do.

Q And that document purported to reflect your total compensation report as of the end of 2001, is that right?

A That's correct.

Q And if you turn to the fourth page of that document, P 1302, there's a discussion of your future retirement benefits, correct?

A Let me take a minute.

Q Sure, take your time.

A Projected annualized payments at age 62, right?

Q Right. You got it.

A Yes.

Q And you understood that these were the projections of the annual retirement income that you could be expecting to get from CIGNA and that was the whole purpose of the report, right?

A I imagine.

Q And under the first column under payable at retirement on 1302, it says, "you have already earned" and then there's reference to the pension

plan and that pension plan reference was to the cash B -- Part B cash balance plan, correct?

A I'm assuming it is. It doesn't state that specifically.

Q So it could be to that or it could be also potentially your minimum benefit under Plan A, right?

A It could be.

[Page 136]

Q Yes. And what it indicates is that you have already earned an annual retirement benefit of $21,820 a year payable at age 62. Do you understand that?

A Yes.

Q And that you understood that at the time?

A I don't know that I dwelled on this page, to tell you the truth.

Q So you didn't take the time to actually read a report from CIGNA that actually laid out what your retirement benefits were?

A If I were to take that amount, just plain dumb arithmetic times 12, it would be less than $2,000 a month, so if I look at it generally, it looks like that's my minimum benefit.

Q Okay. And in the second column, it indicates that you could earn, with future service, additional benefits and for the pension plan, they provide a reference to $26,815. Do you see that?

A Yes.

Q And then in the subsequent reports, for example Defendants' Exhibit 590, the total compensation report for 2002, if you go to the last page, page

1298, there's a similar albeit slightly different set of columns but the effect is the same. What they're doing is projecting your benefits through a particular date, benefits that you had already earned. Was that your understanding at the time?

[Page 137]

A Yes.

Q And Exhibit 591, Defendants' Exhibit 591, was the same total compensation report but this time as of the end of 2003.

A Are we on – I'm not sure I'm looking at the same page you are looking.

Q I'm looking at Defendants' Exhibit 591.

A Yes.

Q And I'm looking at the second to last page in that exhibit, which is supplement D 023121?

A Okay, we are on the same page.

Q Now, on that page, there's a reference to your actual account balance, cash B, Plan B account balance, up in the left-hand corner, do you see the specific amount, $199,066?

A Yes.

Q And then if you go to the next page, again, there's a projection of the benefits that you've earned at age 62 and the benefits that you've earned at age 65 and then projected benefits if you continue with CIGNA to these ages. Do you see that?

A Yes, I see that.

Q And you read these total compensation reports at the time and understood that at the time?

A Well, if I look at age 62, which is the closest to what I would have been at that time, this would have been 2003 and I was 59 so still, and if I look at 29257, that's still if I **[Page 138]** divide that by 12, that still looks like my benefit.

Q I understand. Now, sticking with Defendants' Exhibit 591, turn to the first page of that document. That fourth paragraph says: This total compensation report lists all of your sources of compensation at CIGNA, both your direct pay and your benefits. It provides a forecast and projection of your expected retirement resources so you can make those difficult decisions about saving for later versus spending now. It reminds you of the range of benefit programs available.

Do you see that, Ms. Broderick?

A Yes, I do.

Q So one of the ways you could use these annual account statements and total compensation reports that you received from CIGNA was to help you in your financial planning?

A Absolutely, yes.

Q Okay. But as I understand it, you and your husband didn't really do any financial planning before your retirement from CIGNA, isn't that right?

A I'm the one that usually makes those decisions. I was saving as much as I could and, yes, I had planned for my retirement and had I known some of the things that I know today then, I would have saved even more. But I think that I conservatively took and saved as much as I could out of my salary at the time.

[Page 139]

Q But did you --

A And part of my plan was to receive additional pension benefits from CIGNA, which in fact I did not.

Q And you and your husband never prepared a financial plan yourself, did you?

A No, I am the one that keeps the budget and I know what we are able to save and what we have to spend.

Q And your husband isn't inclined to engage in financial planning, isn't that what you testified?

A That's correct. That's correct.

Q Okay.

THE COURT: And again, this witness may not be the right one but am I reading these right that between the statement on 590 and the statement on 591, the projection of future benefits went down? I think I'm reading that right, i t because of the different interest rates?

MR. BRUCE: Yes.

THE COURT: From 7-1/2 to 7.

MR. BRUCE: Right.

THE COURT: When she would have received this, she would have been informed at least -- again without reading the fine print about differences in interest rates -- that actually her pension benefits had decreased after a year's more of work, is that correct?

MR. COSTELLO: Yes.

[Page 140]

THE COURT: So I'm reading that right.

MR. COSTELLO: Yes, you are.

MR. BRUCE: Your Honor, to clarify, she would have been informed, if she read all the footnotes she would be informed --

MR. COSTELLO: Your Honor, this is --

THE COURT: I understand that. I'm just trying to understand the document and we can have argument about it. On the face of it, the numbers go down and it looks to be like it's because the interest rates change and that's all.

MR. BRUCE: Right. Right.

THE COURT: Go ahead.

MR. COSTELLO: Thank you, your Honor.

Q Ms. Broderick, prior to returning to CIGNA from your periods at Hartford and Aetna, you did not request or review any written materials describing Part A or Part B of CIGNA's pension plan from CIGNA, correct?

A I'm sorry, could you repeat that question? I was distracted, still looking at the document.

Q No problem. No problem. Prior to returning to CIGNA from your hiatus with Hartford Life and Aetna, you did not request or review any written materials describing Part A or Part B of CIGNA's pension plan, correct?

A I had in my possession Part A documents and I had reviewed Plan A to refresh my memory because that was a plan **[Page 141]** that I was still part of.

Q You didn't request any other materials?

A I did not request any other materials, no, sir.

Q Now, when you returned to CIGNA in June of 2000, the SPDs for CIGNA's benefit plans, including Part B, were available online at that point in time, correct?

A I became aware of that after I started employment, yes.

Q So the answer's yes?

A Yes.

Q But you did not go on line to review the SPDs for Part A or Part B in any of the year 2000, did you?

A I don't believe I did. I can't be sure of that but I don't believe I did because at that time, I was still under the assumption that I was in Plan A.

Q I understand. Even though no one had told you that.

A If you want to say that, I assumed I was in Part A.

Q The first time you reviewed the plans for Part B was in 2002, correct?

A I believe that it was in 2002 that I asked for a hard copy, yes.

Q But these were available online and the first time you took the effort to actually review the SPDs for Part A and Part B, whether on line or in hard copy, was in 2002, correct?

A I'm not absolutely sure that that's correct. It could have been 2001 because during 2001, I was

in conversations **[Page 142]** with Mr. Belts and I might have looked at it. I don't recall.

Q You might have looked at Plan A but not Plan B, correct?

A Correct.

Q So the first time you would have looked at the Part B Summary Plan Description online or in hard copy was in 2002, correct?

A That may be true, yes.

Q But at some time you actually did review the Part A Summary Plan Description and Part B Summary Plan Description because you wanted to see what the differences were, isn't that true?

A I wanted to see the differences and I also wanted to understand how Plan B functioned, how that worked.

Q Right. So one way to look at the differences between the plans is to look at the Part A Summary Plan Description and compare it to the Plan B Summary Plan Description and that's what you did?

A I wanted to clarify that. One way to look at the difference -- I object to that, because it was very hard to compare the two plans. If you looked at it from my perspective of when I retired, I would have had to do it in a way that, okay, if I had came in and I was Plan A, what I would get? If I never came in and I was Plan B, what would I get? That would be a true comparison.

Being that I accrued certain benefits under one plan **[Page 143]** and then I was transferred to another, it was very difficult, and that was exactly the question that I continued to pose to Kevin Kenney, to

Mr. Belts: What is the financial impact of this conversion to me? And that, I was not able to ever get an answer and I was not able to figure out the differences by reading the two documents. I couldn't figure out what that meant to me personally.

Q Okay. And both of those summary plan descriptions to you, summary plan descriptions, were available to you online, right?

A I believe so, yes.

MR. COSTELLO: Just give me one moment, your Honor. I may be finished.

Q And just to be clear, Ms. Broderick, Plaintiffs' Exhibit 172, this is plaintiffs' exhibits, Ms. Broderick, looking at Plaintiffs' Exhibit 172, that is the letter that you received from CIGNA correcting the error that had been made on your, what's been called, the free 30 benefit, is that right?

A That's correct.

Q And currently you are receiving a pension amount of $2,019.81, is that right?

A That's right.

Q Could you turn to Defendants' Exhibit 516, Ms. Amara? Again, these are defendants' exhibits.

MR. COSTELLO: May I approach, your Honor?

* * *

[Page 157]

* * *

ANNETTE GLANZ

having been called as a witness, was first duly sworn and testified on her oath as follows:

THE CLERK: Please be seated. Please state your name for the record, spelling your last name, and give us your business address.

THE WITNESS: Annette Glanz, and my business address is 13801 Reese Boulevard, that's Huntersville, North Carolina. Do you need the zip code?

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. BRUCE:

Q Good afternoon. Could you tell us when you were born and give us some information about your education?

A Yeah, I was born October 6, 1964. I graduated with a bachelor of science degree in accounting from the University of Connecticut in 1987.

* * *

[Page 164]

balance that we would start with would be similar to the value of the future payments that we would get under the old pension plan and so there really wasn't a change other than you had this money up front.

Q Was there one of the written communications from CIGNA that you remember reviewing in particular?

A I remember looking at the retirement program, the glossy document.

Q Which is Exhibit 227, is it?

A 227.

Q Okay. And you believe that you reviewed that carefully?

A Yes.

Q And what were you looking for when you reviewed it?

A I was looking for a description of what the new plan entailed, how it would work. Anything that looked like it would be a significant detrimental change, something that looked like it could be bad compared to what I had had before and also, you know, to see how it was going to work.

Q And what did you find when you reviewed the Exhibit 227?

A From my review, I found that the new plan would be similar to what I had earned under the old plan and there weren't any big surprises for me in it; that the cash balance I was starting with, it was just more of a timing. You have it in an account now rather than having to wait until you retire to see what it's going to be.

* * *

[Page 170]

years in which your benefits, in terms of a retirement benefit, did not grow at all?

A No, I wasn't aware of anything like that.

Q So when did you learn that there might be reductions when you compared the old plan formula to the new plan formula?

A When was I aware that it was definitely occurring?

Q Yes.

A Not until I heard about this lawsuit.

Q And was this lawsuit first that you had heard that there could be a period of years in which your benefits were not growing at all?

A Yes.

Q What do you think that you could have done if CIGNA had told you that your benefits were being reduced substantially?

A In the department I was in at the time, I had a lot of seniority over a lot of the other employees that were there and not -- I can't think of anyone that would have been affected by this change as much as I would have been and I think I would have had some negotiating when it came to raise time that year, that they could have made this up to me some by giving me a bigger raise that year.

I could have contributed more to my 401K to make up for the benefits that I would have had at the time, to make up for it immediately.

Q Okay. What happened to your job in 2004?

* * *

[Page 178]

MR. COSTELLO: I'm going to assert the same objection, your Honor.

THE COURT: I'll take it for whatever it's worth. Go ahead.

A The people that I worked with that would have been affected, and myself, we would have been more vocal in our management meetings, asking why things were done that way. Asking for relief for those of us that were affected harder than maybe some of the newer employees. Some could have left, looking for better benefits. I myself probably would not have quit. It wouldn't have been a quit decision for me. I would have taken other steps.

Q And --

THE COURT: You mentioned steps of trying to negotiate a higher raise. Were there not sort of grades -- were raises just freely negotiated or grades and classifications?

THE WITNESS: You generally didn't negotiate raises but they would have taken that into account when they were doing employee rankings if you were vocal about it.

Q Ms. Glanz, let's suppose with your accounting background that you had made a project of comparing the old plan benefits with the new plan benefits, and you determined that there was a 40 percent reduction in your benefits compared to the old plan compared to if the old plan had continued, what do you [**Page 179**] think would have happened, if you discovered that individually?

A I considered the project of trying to do it beyond the difficulty of calculating it, a single person crusade in an environment like CIGNA isn't going to go anywhere and I can give an example of that, if you want.

I had an instance where we were getting an extra paycheck because we were paid biweekly and it was a 27 pay period year because you got paid on Janu-

ary 1st and you were going to get that extra paycheck on December 31st. CIGNA took our annual salary and divided it by 27 instead of 26 and reduced every one of our paychecks. Theoretically, a quick calculation would show you that it's equal.

If you go a step further and look at when raises occur and how much you would have gotten, I proved mathematically that the 27 pay period was shorting our salaries and I presented that to my manager at the time, it was very early in my career, and he said -- he looked at my numbers, he said this looks right, he walked away to present it to someone higher up and shortly after that came back and just said, just forget about it.

So even though I had proven that something was wrong, it didn't go anywhere and so I kind of knew then a single-person crusade wasn't going to go anywhere.

Q So you think there's a difference between if CIGNA told [**Page 180**] employees that their benefits were being reduced by 40 percent, that that's different than if you individually figured out that your benefits were being reduced by 40 percent?

A Yeah, if I had figured it out individually and taken it to, you know, my vice-president or my boss or someone like that, I don't think anything would have happened, if it was just one single employee pointing it out.

MR. BRUCE: Okay. Thank you.

THE COURT: Go ahead, Mr. Costello.

MR. COSTELLO: Thank you, your Honor.

CROSS-EXAMINATION BY MR. COSTELLO:

Q How are you, Ms. Glanz?

A Good, how are you?

Q Good.

MR. COSTELLO: Your Honor, may I approach the witness?

THE COURT: Yes.

MR. COSTELLO: I want to make sure we have all the right binders.

Q You have binder 7?

A 7.

Q Great.

MR. COSTELLO: Your Honor, just for your reference, ***

* * *

[Page 189]

MR. BRUCE: No, it's not on the hard copy but it's on his copy so he can identify it for the record.

MR. COSTELLO: Just to be clear, I'm referring to Amara 441, on what is Exhibit 2 to Plaintiffs' Exhibit 8 so we are clear for the record, but that is the same as page 2 of Exhibit 227.

Q My question for you, Ms. Glanz, is: Did you read through this folder that was in Exhibit 227 when you received this document in the fall of 1997?

A Yes.

Q And did you read it carefully?

A Yes.

Q And do you see that --

MR. BRUCE: Can he unapproach the witness now that he's identified the page?

MR. COSTELLO: I'm happy to do that, your Honor.

Q And did you see the section on step 1, "calculating your final pension benefit"?

A Yes.

Q And you read that section carefully?

A Um hum.

Q Is that a yes?

A I'm sorry, yes.

Q And did you see step 2, "converting your final pension benefit to an opening balance"?

[Page 190]

A Yes.

Q And did you read that carefully?

A Yes.

Q And based on the information that you read in those documents, in this document, did you have any questions about your opening account balance based on what you read?

A No, I thought it was pretty clear that based on what I read, that my opening account balance was equivalent to the present value of my annual pension benefit when I got to 65, so I didn't see any reason to question it.

Q So you didn't raise any questions?

A Um um.

Q Of anyone?

A No.

Q Now, in your current job, the one you took after you left CIGNA, you do have a retirement plan, is that right?

A I do not have a pension plan; I have a 401K plan.

Q You did not ask to review the SPD for that plan before accepting your new job because retirement benefits were not a factor in your decision regarding where to work, is that right?

A Yeah, it wasn't one of my main reasons for taking this job, no.

Q And you alluded to your financial plan.

A Um hum.

* * *

CLAUDE POULIN

[Page 209]

Q Mr. Poulin, let's try to talk about wearaways, of what that concept means.

THE COURT: Mr. Blumenfeld, you don't dispute that Mr. Poulin is an expert, right?

MR. BLUMENFELD: We do not dispute.

THE COURT: Very good.

Now you can go on.

Q Let's first talk about wearaways. Can you try and explain what a wearaway is?

A The wearaway refers to a period of time during which there is no increases in the participants' accrued benefit under the pension plan. It is a

period of time where there is -- the benefit stays in place and does not increase; where the benefit accrual rate, if you will, is zero.

Q Are you talking about the net benefit? That if a plan has two different benefits, is there a wearaway period if one benefit is growing but the other benefit is already higher than the first?

A The wearaway in the cash balance plan environment is attributable to the fact that -- I would have to backtrack a little bit -- is that there are two possibilities when a corporation designs or decides to adopt a cash balance plan. There is what is usually called the A plus B approach or the A, the greater of A or B.

A plus B means that the benefit that existed on the **[Page 210]** date of conversion remains intact with all its features and then the employee will accrue, starting on day one after the adoption of the pension plan, the pay credits and benefit credits associated with the benefit formula under the cash balance plan.

In the greater of or the A or B situation, which is the situation we are dealing with here, then the benefit that existed on December 31, 1997, the normal retirement benefit payable at age 65, that benefit is converted into so-called opening account balance and to the extent that the opening account balance is less, represents less, than the actual present value of the benefit that existed on, in this case, December 31, 1997, then there will be no accrual for a certain period of time. So that the main reason for the existence of the wearaway is the selection of the greater of A or B.

Now, there are some reasons for the fact that the opening account balance might be worth less than the benefit to which the participant was entitled on the date of conversion are multifold. The first one is the interest rate that is used to discount the accrued pension benefit of the participant.

I understand that for all the employees who testified today, this interest rate was 6.05 percent which at that time was equal to the five-year treasury rate plus 25 basis points, or .25. 6.05.

[Page 211]

If the interest rate that is used later or if the prevailing interest rates decrease after the conversion, then it will be difficult for the opening account balance to recreate the benefit that was converted and there will be -- this is a reason why there is a wearaway.

A second reason is that when the opening account balance is computed, there is also a mortality discount for what's called pre-retirement mortality. For instance, let's take the case of a 40-year-old employee, who is entitled to a benefit, let's assume a lump sum of $500.

Then this benefit is discounted for interest but it is also discounted for the probability that this employee may die in the interim.

Q And approximately what type of a discount would that be for an employee who's 40?

A For a 40-year-old employee, it is approximately depending on the mortality table but a 10 percent discount is a good approximation of that discount. This means if the employee were otherwise strictly on interest, if you make an interest calcula-

tion, if the employee is entitled to $100, then this will be discounted to $90. So that the opening account balance will be reduced for that reason.

Another reason is that the benefit that is converted into an opening account balance is strictly the normal retirement benefit without any subsidy of any sort that will **[Page 212]** be payable, that was payable, that would have been payable, at age 65 under the prior plan, the previous plan.

Now, traditional defined benefit plans offered benefits that went way beyond this age 65 benefit. In many cases, there were early retirement subsidies, and we saw this morning that the early retirement subsidy plays a great role because it was worth much more than age 65 benefits.

So that an employee who is entitled to a subsidized retirement benefit at age 55, the present value of that benefit in some cases might be nearly close to twice the present value of the benefit at age 65. So there is a wearaway in the fact that this early retirement subsidy is not included in the opening account balance.

Finally, there is, in the case of CIGNA there were, other benefits. The free 30 percent benefit, surviving spouse benefit. Many pension plans provide subsidized surviving spouse benefits and CIGNA did. The value or the additional value of this subsidy, the surviving spouse benefit, was not taken into account in the calculation of the opening account balance.

And finally, there was also a Social Security supplement that was payable to employees before 1998, who were retiring at age 55, and it was a benefit that the plan said was protected. So that this benefit, for

an employee who was eligible, who was age 55, would have been payable even after **[Page 213]** the conversion of the plan but this benefit was not, value of this benefit was not, in the opening account balance.

So for all these reasons, the opening account balance was much less than the actual lump sum value, if you will, of these various benefits that were not included in the opening account balance and that led to the wearaway.

THE COURT: But hang on. I mean, it wouldn't have to be that way, right? In other words, you could do it in such a way that you included all the benefits --

THE WITNESS: Yes, your Honor.

THE COURT: -- and I gather, if I'm talking about a defined benefit pension benefit that's vested when someone's 45 and they're not going to get it until 55 or 65 and you were to convert it to present value, wouldn't you normally put in a mortality discount? Or not?

THE WITNESS: It depends for what purpose. In some cases, there would be a mortality discount, if it is based on the probability that this benefit is paid.

THE COURT: Right.

THE WITNESS: If this benefit -- if the employee were to die and the estate would receive the benefit, for instance.

THE COURT: Right.

THE WITNESS: Then there wouldn't be a mortality discount because the benefit would be payable in any event.

* * *

[Page 217]

is that right?

THE WITNESS: Yes, correct. Yes, your Honor.

Q And have you also heard of cash balance plans that include the value of the early retirement benefit in either the opening account or they include it when somebody grows into eligibility for early retirement?

A Yes, I did.

Q Okay. And have you heard of -- well, let's talk about the mortality discount first. If a mortality discount is taken and establishing the opening account balance based on an employee being age 40 and this being representing a value of an age 65 benefit, if there's a 10 percent mortality discount taken for that, is there a mechanism, let's use CIGNA as an example, is there any mechanism under CIGNA's plan where, if the employee continues to live until age 65, that they get that 10 percent back?

A No, this discount is lost forever. This 10 percent discount in the case of the 40-year-old employee is lost forever, it is never recredited back.

THE COURT: I'm just trying to understand this wearaway. So would it be the case that with respect to every single CIGNA employee, because, A, there was a mortality discount; and B, they didn't include certain benefits as you say, and obviously they did whatever they did on interest rates but even putting that aside, that with respect to every **[Page 218]** single CIGNA employee, there would be a period of

time while they were enrolled in Part B, assuming they had some opening balance of some kind, where they were not actually earning benefits, that is to say that they were always catching up? Or are there some CIGNA employees who would have started out with no catch-up?

THE WITNESS: A very short service employee may not have experienced the wearaway because it could have been that the first year pay credit, an interest credit would have nullified the impact of the discount for mortality.

I haven't encountered the situation but it's possible to mathematically imagine a situation where it could happen but there are cases where there were employees, very young employees, who also experienced wearaway.

THE COURT: Hang on. You would say with respect to CIGNA, while theoretically it might be possible that some short service employees didn't experience wearaway, I take it that it's your testimony that in fact, that small group, theoretical group aside, every single CIGNA employee did in fact experience the wearaway, who presumably had an opening balance?

The reason I'm asking these questions is this of some phenomenon directed at Ms. Amara, Ms. Broderick, Ms. Glanz and whatever is unique about them or was this experienced essentially by every single CIGNA employee for **[Page 219]** different degrees in different lengths of time but everyone experienced it?

THE WITNESS: I cannot say for sure that 100 percent of the employees had experienced wearaway but I would say that the overwhelming majority experienced wearaway; that the exception would be for

a very short service employee who would have had a very small accrued benefit so that the initial pay credit would nullify this impact immediately, but I have not encountered such a situation.

THE COURT: Okay.

Q Two questions: First of all, was there a group of CIGNA employees for which CIGNA used a lower interest rate to establish an opening account balance?

A Yes.

Q What did you find for that group of employees?

A In fact, for these employees, because CIGNA used a discount rate, that instead of being the five-year treasury rate plus 25 basis points, it was the five-year treasury rate minus 75 basis points. In other words, it was 1 percent less than the 6.05 percent that was used to compute the opening account balances of the other participants, and in addition, instead of using the age 65 benefit, CIGNA used, in the calculation, the age 62 benefit which an element of early retirement subsidy so that the combination of these two factors resulted in some participants not to experience ***

* * *

JAMES STRATMAN

[Page 591]

you said when you talked about putting yourself in the place of the readers, in a sense.

Did you understand that thousands of participants in this plan actually worked in the retirement industry?

A Yes.

Q And did you take that into account in your report?

A Yes, I did.

Q Where in your report is that taken into account?

A Oh, in my report? No.

Q Okay.

THE COURT: Mr. Costello, you don't have to answer this question but since we've got Dr. Stratman here, maybe we could run it by him. Do you claim that in any of these documents, there is a statement that any employees' benefits would be less under the new plan than they were under the old plan and if so, maybe you could run it by him and see if he understands it that way.

MR. COSTELLO: I think there are a number of statements that we can point to, your Honor.

THE COURT: Let's draw his attention to that, and mine.

Q Why don't we get to that right now? While we are on the signature newsletter, let's ask a couple of questions about what you actually considered in the signature newsletter. If you go to the fifth page.

* * *

[Page 597]

A No, I did not.

Q And again, another message to plan participants which, based on your testimony, I think you could agree it was reasonable for CIGNA to expect plan participants to read:

You will receive a Total Compensation Report in the spring of 1998 that will show your actual opening balance under the new plan. In the future, you will also receive quarterly statements of your retirement plan account balance to help you track the growth of your retirement benefit.

Do you see that?

A Yes, I do.

Q And you don't mention that provision anywhere in your report, do you?

A I don't mention that text in my report, no.

Q And you don't mention anywhere in your report the fact that CIGNA, as part of its communications program, specifically anticipated in these precursor documents that they would communicate this more specific information in total compensation reports and annual account statements, correct?

A Correct.

THE COURT: I think this was the point he was making and the plaintiffs were making, were there any documents that told them they were actually not earning retirement benefits because the account -- even though they were supposed to grow steadily and they would get credited annually each year, in **[Page 598]** fact their minimum benefit was higher than there --

MR. COSTELLO: Your Honor, I think the answer to that is yes.

THE COURT: So you are going to show me what they are? I haven't seen them.

MR. COSTELLO: I think we've already shown them. Remember, there are two separate, there's an old plan and a new plan. There's an explicit statement that you were not earning benefits under the old plan anymore.

THE COURT: Right.

MR. COSTELLO: You are earning benefits under the new plan, you earn a benefit every day. It's just that you have to be provided the higher of the two.

THE COURT: I understand. To be honest, this may not make any difference, there's no statement anywhere in any of these documents that says that, that there will be periods of time for some employees, apparently a large number of employees, who despite the fact that your account will show you are credited with accounts, your pension benefit will not be growing at all. You will not -- your pension benefit, the amount you will receive at age 65 or 55 will not be increasing until such time as the amount of credits here exceed your minimum benefit. There's nothing that says that anywhere, I think.

MR. COSTELLO: No, that's correct.

[Page 599]

THE COURT: That I see.

MR. COSTELLO: No, that's correct.

THE COURT: That may or may not be true and it may or may not be significant but the bottom line is there's certainly nothing in any of the documents that I have read that says, hey, listen, for some employees, just be aware that while this talks about

your steady growth and all this other stuff, that in fact there may be people who will be working for up to five years and during that period of time, their pension benefit will not grow one dime.

MR. COSTELLO: Well, again, pension benefit, if you use pension benefit under both plans as a net benefit.

THE COURT: Yes.

MR. COSTELLO: There is a statement that says you will not accrue any more benefits under the old plan.

THE COURT: I understand that but I think what they're really saying is, you know, honestly, I think honestly when people work, they probably do expect that they're earning more pension benefits by working and I guess the question is, is there anything in any statement here, or any other document, that would say, actually, you are working without getting any more pension benefits during these couple of years or four years or five years because of the way our plan is done. I don't see anything. I haven't seen any.

MR. COSTELLO: There's no provision that mentions **[Page 600]** the wearaway effect because it's an effect, it's not a plan provision. It's not a provision under Part A and it's not a provision under Part B.

THE COURT: We'll figure out whether, you know, I understand that but I just wanted to establish that. There's nothing that would give anyone any direct certainly explicit statement that regarding the fact that they may be subject to the wearaway.

MR. MOUKAWSHER: Correct.

THE COURT: Okay. It's your position legally that there's no requirement that that be done. Guess I'll figure that out. That's my job.

Q Just to put a finer point on that, Dr. Stratman, could you turn to Amara 00447, the first sentence, how's the retirement program changing? What does it say?

A Effective January 1, 1998, CIGNA will replace the current pension plan with a new retirement plan for most employees.

Q Nowhere in your report is there any reference to that provision, is there?

A No reference to that statement, no.

Q Now, you made an issue of the fact that there was a reference to federal guidelines in some of these documents, and in one of the examples was on page 4, Amara 00449, just to give you a context for my question. Down on the bottom left-hand corner: How do I know that the lump sum conversion

* * *

[Page 636]

* * *

ROBERT JOHN UPTON

having been called as a witness, was first duly sworn and testified on his oath as follows:

THE CLERK: Please be seated. Please state your name for the record, spelling your last name, and give us your address.

THE WITNESS: Starting with my last name?

THE COURT: Starting with your name and spelling your last name.

THE WITNESS: Robert John Upton, U-P-T-O-N.

MR. BRUCE: Your address?

THE WITNESS: 371 Markle Road, Bryn Mawr, Pennsylvania.

THE COURT: Go ahead, Mr. Bruce.

DIRECT EXAMINATION

BY MR. BRUCE:

Q Mr. Upton, could you tell us when you were born and something about your educational background?

A Born March 28th, 1952. My undergraduate degree was Westminster Choir College in Princeton, New Jersey, and a few years later I went on to Dickinson School of Law in Carlisle, Pennsylvania.

Q When did you graduate from Westminster?

A 1985.

* * *

[Page 642]

Q Do you have any recollection of who spoke?

A I think it was Jerry Meyn.

Q And Jerry Meyn, what was his title?

A Assistant vice-president -- I don't know his exact title but I think there was a VP in it someplace of human resources.

Q He was specifically responsible for the pension plan?

A I'm not sure if he was responsible but he was usually the voice piece to the employees of what was going on.

Q Okay. And based on the materials that you received – let's go back a little bit. Do you think that you asked questions at that meeting?

A I probably did.

Q Okay.

A Because I was very interested in knowing if there was going to be any impact to me.

Q Okay. And based on the materials that you received and the meeting that you attended, what was your understanding of what CIGNA was doing with the cash balance plan?

A That it was going to be a comparable benefit to what I would have obtained under the old plan.

Q And did you understand whether CIGNA was achieving cost savings with these changes?

A Well, in the written materials that they provided, they said that they were paying as much into the plan as they had -- under the new plan, they were paying as much as they had paid **[Page 643]** under the old plan.

Q And did you understand whether your benefits would be lower under the new plan than they would have been if the old plan had continued?

A At that time?

Q Yes.

A Well, just based on the statements in the materials they provided, it said comparable benefits for older employees, which I took to mean pretty

much the same amount. I mean, that would have been everybody's question, am I going to get the same amount of money when I retire or less? And --

MR. COSTELLO: Your Honor, move to strike that.

THE COURT: Just, I know you didn't do it intentionally, why don't you just talk about what your questions were and what you understood, okay? As opposed to projecting what everyone else --

THE WITNESS: Okay.

THE COURT: Okay?

THE WITNESS: Okay.

THE COURT: Go ahead, why don't you start again. I'll sustain the objection.

MR. COSTELLO: Thank you, your Honor.

MR. BRUCE: Could you read back the question? (The pending question was read by the reporter.)

Q Go ahead.

[Page 644]

A I understood that they would be the same or pretty much the same.

Q Okay. And what did you understand that the primary advantage of the cash balance plan was?

A That it was portable.

Q And I guess following the Judge's instruction, do you have an opinion in hindsight on what the cash balance plan was about, for yourself, personally?

MR. COSTELLO: Objection, your Honor. Relevance.

THE COURT: Opinion?

MR. BRUCE: Based on what he's learned since then, what is his understanding --

THE COURT: Hang on. He's testified that at the time he understood that he was going to get the same or comparable benefits.

Is that your understanding today, sir?

THE WITNESS: Oh, no.

THE COURT: Okay. What is your understanding?

Q What is your understanding today?

A Well, that the benefits -- the last computation that CIGNA eventually provided to me indicated that they would be about 44 percent lower, under the new plan, than under the old plan.

Q Okay. And do you recall receiving your first cash balance account statement?

* * *

[Page 667]

yourself, did you ever hear that there might be a period of years where your benefits actually hadn't grown at all?

A No.

Q And from your own perspective, what do you think would have happened if, in 1997, CIGNA had told you that they were going to a cash balance plan and your benefits would be reduced by 44 percent?

A What do I think the outcome would have been?

Q What do you think you would have done?

A Protested. But I think there would have been a general protest. I think there would have been a firestorm.

MR. COSTELLO: Objection, your Honor.

THE COURT: Well, I'll take it for what it's worth. Okay. And you mentioned that you have been contributing the maximum to your 401K plan since when?

A I believe since the time I started working at CIGNA.

Q So like the early 1990s?

A Um hum.

Q And so when you learned about these reductions, did you take any other steps for your own individual financial protection?

A When I realized that the entire investment risk of all of these, including the cash balance plan, was shifted to me, I realized I better save more, be more aggressive in my savings.

Q And so did you take any specific action?

[Page 668]

A Well, I conferred with a financial advisor consistently to try to save as much as I could and to determine what vehicles could provide that for me, what investment vehicles I should be in.

Q And did you purchase an annuity or anything?

A Yes. Yes.

Q And when, approximately when was that?

A 2003. January of 2003, I think, I believe I purchased the annuity. I was very concerned because the bottom had fallen out of the market and I realized my entire retirement was dependent on me shouldering this risk and handling it. So my financial advisor told me about this annuity which guarantied a minimum return.

THE COURT: So go back. Did you complain to this guy, Mr. Levinson, or not?

THE WITNESS: No, I realized that --

THE COURT: You don't have to explain why; we never got to the end of that story.

THE WITNESS: Yes. No, I didn't.

Q And you concluded that at that point what, in terms of making other, complaints to other people besides Mr. Levinson, did you --

A I concluded for as long as I worked at CIGNA, I would just have to keep my mouth shut.

Q And when did you stop working for CIGNA?

* * *

[Page 674]

Q But as of the time of your deposition in May of 2006, you had never reviewed the SPD for your partner's plan?

A That's right.

Q And you have never asked to review that SPD?

A No, I haven't.

Q Now, focusing on CIGNA's Part B SPD, you have the 1990 SPD in your files and you produced it in this litigation --

MR. BRUCE: Objection. You said 1990?

MR. COSTELLO: 1999. I'll ask the question again, your Honor.

Q Focusing on CIGNA's Part B SPD, you have the 1999 SPD in your files and you produced it in this litigation, but you do not recall reading it because by that point, you were taking your questions directly to the human resources department?

A Correct.

Q Now let's go back to the beneficiary issue. Under CIGNA's traditional defined benefit plan, Mr. Upton, you had no preretirement death benefit because you aren't married, correct?

A That's a technicality that I do not know.

Q You are not aware of that?

A No.

Q Okay. And are you also aware that -- do you know what the free 30 benefit is?

A No.

* * *

[Page 696]

know what that is?

A No.

Q And would you know how to check the accuracy of that?

A No.

Q And why did you ask CIGNA to do comparison calculations of your benefits under -- if the old plan had continued compared to the cash balance plan?

A Based on what CIGNA told us in all the materials when they introduced the plan, they said that it was comparable for older employees and could provide higher benefits for younger employees and it was looking like the net result of all of these numbers, whatever they were, was significantly different from that.

THE COURT: And the state of the record is that at least when they first calculated it, leaving out the S.I.P. at the 6-1/2 percent --

THE WITNESS: Correct.

THE COURT: -- your benefit, apples to apples comparison, old plan to new plan, would have dropped 30 percent?

THE WITNESS: Yeah, I think it was 29 percent.

THE COURT: All right, 29 percent. And when you asked them to redo it at a different interest rate, it went up to 44 percent?

THE WITNESS: Correct.

[Page 697]

THE COURT: Okay.

Q Could you have calculated those numbers yourself?

A Not the cash balance plan numbers.

Q How about under the old plan, could you have projected benefits under the old plan to a later age?

A Well, I guess -- I didn't have the ability at that point, I guess maybe I could have found some computer program that would take my current earnings, put in some increase, you know, inflation factor and run it forward in time so that I could get the last three, you know, the highest earnings. I mean, I knew what the formula was; I didn't have the ability to calculate it.

Q Okay. So if CIGNA did the calculations, that would give you a calculation --

A Correct.

Q -- and that would also give you a calculation that there wouldn't be any argument about?

A Correct.

Q And --

A I mean, I could have made a huge mistake in calculating it myself and not knowing it.

Q And after you learned about the future benefits would be 44 percent less, did you ever go back and look at the written materials that CIGNA had provided you?

A Absolutely.

[Page 698]

Q And what do you recall about that?

A That experience?

Q Yes.

A I was very angry. I went through them and I underlined the statements that I thought were misleading in the original materials. That because I was thinking, well, what in the world made me think that I was not -- that I was going to get a similar benefit under the new plan, that it was not going to be a huge detriment to me?

Q So did you think that maybe you had missed something at first?

A Yeah.

Q You thought maybe, my God, maybe I didn't read that page? Did that cross your mind?

A No, it was more to go back to confirm my understanding because it was everybody's --

MR. COSTELLO: Objection, Move to strike.

A Yeah, to confirm my understanding that there would not be an adverse impact to me.

Q And did you find any indication in those materials that there would be an adverse impact on you?

A No.

Q Did you find assurances in those materials that there would not be an adverse impact?

A Plenty.

* * *

[Page 700]

* * *

BARBARA HOGAN

having been called as a witness, was first duly sworn and testified on her oath as follows:

* * *

[Page 712]

A And those numbers . . .

Q So all of these were received in the middle of 1999, they're all dated June 18th, 1999.

A June 17th, 1999.

Q Okay. And what did you do with these estimates? What did you and your husband do with these?

A We compared them to my '97 estimates and saw that they were much lower.

Q And it appears there may be some difference in terms of the age?

A Right.

Q But you and your husband's assessment was that the differences between the estimates was too big to be accounted for by differences in retirement age?

A Correct. That's what we decided, we looked at that. There was big differences.

Q And so what did you do then? Did you do anything back at work?

A At that time, you know, I spoke with other people in my company, other workers, who were kind of in the predicament I was, same age group, same years of service, and asked them if they had looked

into this to see that there was any reductions that they thought maybe in our pension plan and they go --

MR. COSTELLO: Objection, your Honor. Hearsay.

THE COURT: Well, that's what she did, she asked.

[Page 713]

MR. COSTELLO: Right, but she's about to say what they said.

THE COURT: Well, I don't know. That's what she did. Now what's next?

Q Did you and other employees actually do anything at that point?

A Yes, actually, we went to our supervisor.

THE COURT: You and others?

THE WITNESS: Yes.

Q And what happened then?

A We read, we went to the SPD and looked at that before we went to him and looked for any kind of information in there saying that it was going to be reduced but everything said that it was an enhanced pension plan, that we were going to make out better, they were taking care of us. When we questioned supervisor again also, he said --

MR. COSTELLO: Objection.

A -- you just don't understand it.

THE COURT: That's what he said.

MR. BRUCE: Your Honor, the managers were assigned to answer questions about the pension plan.

MR. COSTELLO: There's no evidence that her supervisor, whoever she's talking about, had been assigned responsibility to talk about benefit issues.

THE COURT: Just so I can get it, if I'm looking at **[Page 714]** 645, page 1427, at benefit commencement date of 12/05 showed the participant getting $364.45?

THE WITNESS: That's correct.

THE COURT: And then by way of contrast, I take it that you were looking at Exhibit 644 --

THE WITNESS: Right.

THE COURT: -- which showed that as of 10/2005, you would get $537.07.

THE WITNESS: Correct.

THE COURT: The delta of that was concerning you?

THE WITNESS: There was a big difference. Yes.

MR. COSTELLO: Of course, your Honor, under the minimum benefit rule, you get the higher of the two.

THE COURT: Well, I'm just going on what she was actually being told about what her benefit was in this period.

MR. BLUMENFELD: Your Honor, if I could point out one additional fact.

THE COURT: Let me ask you this, just to put a point on it: On 645, where is the minimum benefit shown, Mr. Costello?

MR. BLUMENFELD: Your Honor, I'm not sure which – I'm not sure if these numbers are the minimum benefit. What I wanted to point out is there

are different annual salaries in the two estimates being assumed.

THE COURT: There could be all sorts of differences **[Page 715]** but I'm trying to understand what was driving her at this time.

There's essentially the same benefit commencement date and obviously there's a difference in time and benefit under the cash balance is showing $364.45; whereas right before the change it was $537.07. There could be a ton of explanations and it could be that the 364 actually wasn't her benefit because it was going to be a much higher benefit on the minimum benefit, but I'm just trying to find out where that's communicated, that's all. Where is that communicated, Mr. Blumenfeld, the minimum?

MR. BLUMENFELD: Your Honor, I'm not sure if these numbers are the minimum benefit or where she was with respect to the minimum.

THE COURT: How would she know that? If you don't know that, how would she know that, whether these numbers are the minimum benefit on 645?

MR. BLUMENFELD: Your Honor, I don't know if it's the minimum benefit so I don't know what should be disclosed about minimum benefit with respect to her.

THE COURT: Okay.

MR. BLUMENFELD: My point is there are two different salary assumptions made in the different documents which affects the amount of the benefits.

THE COURT: Okay.

[Page 716]

Is that what you were told, that the difference between these numbers was based on salary?

THE WITNESS: No, I wasn't.

Q And were you told that your husband just didn't understand it?

A That's what we were told.

Q And did you ever make any changes to the level of your 401K contribution?

A Actually, every year, when I received my raises, I would take 2 percent of that and put it in my 401K. I did take it up a bit more at that time but not to the fullest extent that I could have if I'd have known how much that I was, you know, losing here and how much I would . . .

Q So you kicked it up partly because your husband suspected that the benefits were lower?

A That's correct.

Q And even though CIGNA was assuring you --

MR. COSTELLO: Objection, your Honor, leading.

THE COURT: You are leading her. Sustained.

Q How did you find out about this lawsuit?

A Actually my husband read it in the "Philadelphia Inquirer" and he contacted you in 2003.

Q If in 1997, CIGNA had told you that your benefits were being reduced substantially, what do you think that you could have done to take care of yourself?

[Page 717]

A Actually, in 1997, I was offered a job from two other insurance companies who had the same benefits at that time as CIGNA. I stayed with CIGNA because I trusted them and I trusted that my pension plan was going to be continued and also maybe if not that, I would have upped my 401K to the limit and I went in for my raises, as I had previously, I would have asked for more money because I had done that and I received more money.

Q In your experience, if there are other job opportunities for someone, is that an opportunity to secure a raise to keep the employee from leaving? If you have another job offer, can you take that in to your boss --

A Oh, absolutely. Absolutely.

Q And are you working now?

A Unfortunately, no, I am not. In 2000, I was having medical problems and in 2001, I was diagnosed with fibromyalgia so I am on Social Security disability. I left the company in May of 2001. However, they have me leaving as of August of 2003. I was not paid. CIGNA did not recognize my disability.

Q Okay. And before you stopped active work in 2001 --

A Yes.

Q -- you tried to get a permanent part time position with CIGNA, correct?

A Yes, I did. I had asked my supervisor also and our HR ***

* * *

[Page 722]

THE WITNESS: Did I know this case was pending at that time? No.

THE COURT: Did not.

THE WITNESS: I actually --

THE COURT: That's okay.

Q Now, you said that you interviewed for two insurance company jobs --

A I didn't interview for them; I was told that I was -- they were after me.

Q You were told --

A Do you want me to name them?

Q Sure.

A AIG and Blue Cross and Blue Shield of Delaware.

Q Who told you that AIG and Blue Cross and Blue Shield were after you?

A An employee who worked for CIGNA, and I was called and all I had to do was go in and I talk to one of -- eventually I talked to one of the supervisors there. But I just had no interest at all.

THE COURT: Supervisor at AIG?

THE WITNESS: Yes.

Q Let's take it one step at a time because I want to make sure I understand the facts.

A Okay.

Q So there was a CIGNA employee who told you about an **[Page 723]** opportunity where?

A At Blue Cross/Blue Shield originally and then another one at AIG.

Q And this was sometime in early 1997?

A Yes.

Q And the bottom line was you were told there were job opportunities at both of those places?

A Yes.

Q And did you actually go to AIG or go to Blue Cross and Blue Shield -- let me finish the question -- and actually interview for a job?

A No, I did not.

Q Did you submit a resume to Blue Cross and Blue Shield or AIG --

A No, I did not.

Q Okay. And you never were offered employment at either of those places, correct?

A No, I did not.

Q Okay.

THE COURT: I thought you said you interviewed with someone from AIG.

THE WITNESS: No, I did not.

THE COURT: Okay.

THE WITNESS: But I'm sure I could have got the jobs.

[Page 724]

Q I'm sure.

THE COURT: We are all confident of that.

Q By the way, one of the things you noted at the outset of your deposition is that you sometimes, because of your fibromyalgia, have trouble remembering things?

A Yes, I do.

Q What's your current home address?

A 32219 Pelican Court, Millsboro, Delaware.

Q And at the time of your deposition, just the year previously, which I guess would have been in 2004 or '5, you had sold your old house, right?

A 2005.

Q You sold your old house in 2005?

A Yes, we did. Old is . . .

Q And you got $140,000 for your old house, right?

A Correct.

Q Your new house, you paid $245,000, right?

A Correct.

Q So one of the ways you adjusted to the information about your lower pension was that you actually bought a more expensive house?

A You could say that, I guess, but it --

THE COURT: That's okay.

Q Leave it at that.

A Okay.

[Page 725]

MR. COSTELLO: Your Honor, may I approach?

THE COURT: Yes.

Q Plaintiffs' Exhibit 8, Miss Hogan, that's what we seem to be using for the Signature Benefit Newsletter and I'm going to ask you some questions about Exhibit 1 to Plaintiffs' Exhibit 8 and Exhibit 2 to Plaintiffs' Exhibit 8, okay?

A Um hum.

Q Let me move away from you so no one complains.

Now, looking at Exhibit 1 to Plaintiffs' Exhibit 8, you testified that you saw that sometime in the fall of 1997, I guess?

A Correct.

Q And you read it?

A Correct.

Q And could you turn to the fifth page of that document?

A Which is that? "More information is coming" or "opening balances"?

Q I'm sorry, "opening balances to be calculated next spring."

A Okay.

Q And do you see, read out loud that first sentence in the right-hand column.

A "Employees participating in the new CIGNA retirement plan will stop earning benefits under current pension plan on December 31st, 1997. Prior to April, 1998, CIGNA will **[Page 726]** formally adopt the new CIGNA retirement plan with all legally required terms and provisions."

Q You can stop there. You read that back in 1997 when you had this document, didn't you?

A I guess I did.

Q Now, turn to Exhibit 2 in Plaintiffs' Exhibit 8. You received that document in the fall of 1997 as well?

A Yes, I do have this.

Q And you read it?

A Yes.

Q Would you say you read it carefully? Was it your practice to read documents like this carefully?

A I didn't understand it.

Q I didn't ask you that. I asked did you read it carefully?

A I read it, yes, but not -- probably not as carefully as I should have at that time. I had other things going on in my life at that time.

Q I understand. Was it your practice to normally rely on your husband to read these documents --

A No.

Q -- or did you read them?

A No, my husband and I read them together. We are a team. We've been married 40 years.

Q And so you read the document, and let me turn your ***

* * *

[Page 728]

THE COURT: Let me just say, did you not take her deposition?

MR. BRUCE: Her deposition was taken.

THE COURT: Oh.

MR. BRUCE: But you didn't take it.

MR. COSTELLO: Oh.

THE COURT: You said during your deposition.

MR. COSTELLO: Pardon me.

Q Do you remember you were deposed by my colleague?

A Yes.

Q My simple question is, if you could turn back to the exhibit, you read that question and you read the statement that you will earn no further benefits under the pension plan after December 31st, 1997, correct?

A Yes, I read that but . . .

Q And you read that statement in the retirement kit and you understood that statement?

A Did I understood? I didn't understand that my benefits were going to be reduced under that statement.

Q But you understood that you wouldn't be earning any benefits, any more benefits, under the old plan, right?

A Correct.

Q You said it was your practice to take 2 percent of your pay and put it into your 401K plan?

A Yes.

[Page 729]

Q And how much were you taking of your pay and putting into your 401K plan at the time you left CIGNA?

A At the time I left, it was 6 percent. I think it was up to the 6 percent.

Q Were you contributing the whole 6 percent?

A Yes.

Q So you changed your practice from contributing 2 percent to actually contributing 6 percent?

A No, 6 percent was the total.

Q I understand. What percent -- you testified in response to Mr. Bruce --

A Right.

Q -- that you were contributing 2 percent of your salary to the CIGNA 401K plan, right?

A At different times, if I had a pay increase, at a time, I would contribute 2 percent of my pay.

Q I understand. And at the time you left CIGNA --

A Yes, my total was 6 percent.

Q So you were --

A Total over time was 6 percent.

Q What percentage of your salary were you contributing to your 401K plan at the time you left CIGNA?

A Guess I'm not understanding this correctly.

Q There's a portion of your salary that you can defer into the 401K plan and contribute to the 401K

plan and then the **[Page 730]** company matches that, right?

A Right, and I was doing 6 percent.

Q And earlier in your career, were you also contributing 6 percent?

A No.

Q Okay. So earlier in your career, you were contributing 2 percent?

A 2 percent, right.

Q And at some point, you increased that to 6 percent?

A Right, correct.

Q And when was that?

A I think that was 1998 or '99. I'm not positive about that.

Q So sometime in 1998 or 1999, you increased your contributions to the 401K plan?

A Yes.

Q And you increased your contributions to the 401K plan because you understood at that point in 1998 or 1999 that you weren't getting the pension benefit that you were hoping or expecting to get from CIGNA?

A I understood that it was less when -- yes, it was less.

Q That's why you increased your contributions to your 401K plan?

A That was part of it, yes.

Q And so we've talked about your job offers, we talked **[Page 731]** about your 401K.

You also said that if you had known about the impact that the changes to the pension plan had on you, you would have tried to negotiate for more money?

A Exactly.

Q Okay. What was your salary in 19 -- when you left the company?

A Approximately $33,000.

Q And what was your salary in 1997 when the announcement was made about the --

A I'm not real positive about that.

Q You are not sure?

A You have that. I'm sure you have that.

Q Would it be helpful if I turned your attention to Defendants' Exhibit 634?

MR. COSTELLO: May I approach, your Honor?

Q Just looking at the second page of Defendants' Exhibit 643, about midway down the page, that number, $26,668.08, does that seem to accurately reflect what your salary was at that time?

A It could have been, yes.

Q And I'm sorry, you said you were making $33,000 at the time --

A That I left. Approximately, yes.

Q So --

* * *

[Page 847]

* * *

BRUCE A. CHARETTE

having been called as a witness, was first duly sworn and testified on his oath as follows:

THE CLERK: Please be seated. Please state your name for the record, spelling your last name, and give us your address.

THE WITNESS: Bruce A Charette, C-H-A-R-E-T-T-E; business address at work? 900 Cottage Grove Road, in Bloomfield, Connecticut.

THE COURT: You may proceed.

MR. MOUKAWSHER: Your Honor, we'll be using plaintiffs' binder 1 and defendants' binder 8.

DIRECT EXAMINATION

BY MR. MOUKAWSHER:

Q Good afternoon, Mr. Charette. How old are you?

A I'm 39.

Q What's your date of birth?

A 12/13/67.

Q Are you employed?

A Yes.

Q Where do you work?

A CIGNA.

Q How long have you worked at CIGNA?

A 19-1/2 years.

* * *

[Page 852]

Newsletter, says "introducing your new retirement program." Take a look at that document there and take your time, take a look, and tell me whether you recognize it.

A I definitely recognize the document.

Q This is a November, 1997, special edition of Signature Benefits Newsletter. Do you recall, as you sit here today, that you read that at the time it came out?

A I recall reviewing it. I don't know if I read it completely, in detail.

Q Okay. From what you read of the document, what was your reaction to the announcement?

A At first, I mean, when you look at the document and you read it, it mentions enhancement, so I had the impression that our benefits were going to be enhanced to what we originally had but when I read through the document, I wasn't 100 percent sure if it really affected me because of my length of service.

Q How many years had you had by that point? You started --

A Eleven, I believe it was.

Q Okay. But you were still only around 30, right?

A Correct.

Q Okay. I'm going to ask you to take a look at another document that's behind the second tab, it says: "Information kit on your retirement program." It's a series of sections of documents. It's also in

glossy form here, so you can look at whichever version of it makes sense, but take a look at that **[Page 853]** one, tell me whether you recognize it.

A Yes, I recognize it.

Q Did you see this document around the time of the cash balance conversion?

A I believe so, yes.

Q And did you read it?

A I definitely read it to the parts that I wanted to try to understand how it affected me, yes.

Q Okay. And when you read the parts that you thought would affect you, what was your reaction to the information?

A At first, it seemed okay. I mean, I really didn't know how it really affected me because I didn't have any additional information on my balance or anything at the time.

Q By this point, had you determined whether you were in the cash balance plan or whether you were in the old plan?

A I think I determined, based on some of the documents that we had, that my age and service time, that I would have fell into the new plan but I wanted to wait until I got something in writing because they mentioned something that there was going to be people who were affected, they were going to get a letter stating what the new opening balance was, so I was waiting to see if I was going to get that letter or not and if I did get that letter, then I was going to . . .

Q When you read through the information kit, did you get a positive or negative impression of the cash balance plan?

* * *

[Page 858]

A I thought it was okay. I mean, CIGNA's telling me that I was doing extremely well, or the representative at retirement services.

Q Did you change any retirement strategies after having made that call?

A There was no need to because I felt that everything was as good or better than the original plan.

Q I'm going to ask you to turn back now to the white binder and Exhibit 8, the tab that says Exhibit 3, it's a 1998 Summary Plan Description. It says right on the front of it, "CIGNA pension plan." Do you see that one?

A Yeah.

Q Take a look at that Summary Plan Description and tell me if you recognize it.

A Yes, I do.

Q Do you recall seeing that Summary Plan Description sometime in 1998?

A Yes.

Q Okay. And did you read the document when you got it?

A I didn't read it from beginning to end but I definitely looked through some of the materials that was of interest to me.

Q Okay. And when you looked through the materials, after you looked through the materials of interest to you, what reaction did you have to what you read?

[Page 859]

A I was just -- the information I was looking at was just trying to figure out how my cash balance was going to grow, and -- because they had an example of earnings and stuff like that and it looked decent. So I was still -- I had no reason to be concerned about that.

Q From reading any of the documents at CIGNA or from talking to any of the representatives you talked to, did any of it ever give you the impression that there would be times during your future benefit accruals when you might get no new benefits?

A Not at all.

Q And did there come a time when you suspected that your positive feelings about the cash balance plan might be wrong?

A Was there a time?

Q Yes, did there come a time after that that you had suspicions aroused, you were concerned that maybe there was something going wrong here or something bad about the plan?

A The time that I felt that something was wrong is when I read a newspaper article, I think it was a year ago, about a settlement that CIGNA had on their retirement plan and reading that article, it indicated that there was a pended class action suit going on, and that's where I found Stephen Bruce's name and I inquired about it by contacting him.

Q Do you recognize the name Depenbrock?

A Yes.

[Page 860]

Q Do you recall that name being in the article?

A I believe that was the "Hartford Courant" article, yes.

Q All right. And after reading that article and finding Stephen Bruce's name in there, did you do something?

A The thing that I did was I, I called up Stephen Bruce.

Q I don't want you to tell me what the two of you discussed because you are a class member and it's attorney-client privilege, but you called Stephen Bruce and did you come to have a different understanding following reading that article and following up on it about the cash balance plan?

A Yes, after I had my conversation with Stephen, I was surprised to learn some things that was happening to my cash balance plan.

Q Okay. All right. Well, we understand your views changed but let's go, let's look at a couple more things that CIGNA was showing you before this point. Turn to, in the black binder, tab 667, that's the document we looked at before that says "CIGNA pension plan statement" on it.

A Okay.

Q Do you see that that says it's for the period ending June 30th, 1998?

A Yes.

Q Do you recognize this document?

A Yes.

Q Did you receive this document somewhere around the end of **[Page 861]** June 30th, 1998?

A Yes.

Q Okay. And I'm going to direct your attention to the section that says -- the box and it says: One, opening balance; then it says two, new benefit credits, $971.08; then it says three, interest credits, $293.90.

When you read those numbers in this book, what did you think was going to happen to that money when you went to retire?

A When I received this document, I was -- it showed the beginning balance and then the new benefit credits and interest. That was money coming towards me and I thought that was building up my retirement plan and that's what CIGNA was giving me, I think this was quarterly or yearly.

Q Okay. With respect to these new benefit credits of $971.08 and $293.90, what's your understanding now?

A I just found out today that that wasn't really the case, that that wasn't what I earned.

Q Now let's look at the document at tab 669. It says "Signature Benefits, Your 2000 Total Compensation." I would ask you to turn to the third page of that document. You will see it says "understanding your total compensation" at the top.

A Okay.

Q Do you recognize this document?

[Page 862]

A Yes.

Q Is that a Total Compensation Report that you got for the year 2000?

A Yes, it is.

Q Okay. And look at the lower part. It says "value from your CIGNA benefits, the amount that CIGNA contributes to the cost of your benefits and other services is a significant part of your total compensation." There's a column there that says, in the center, "CIGNA pays," and if you follow it down to "pension plan," it says, "CIGNA pays you $3,052," and then you can see it's added into a figure at the bottom of the page showing your total compensation of $74,097.

Now, when you read that $3,052 number that said "CIGNA pays" over it, what did you think that was going to happen to that $3,000 when you went to retire?

A That was coming to me. I mean, I was happy.

Q Is that what you thought?

A Yes.

Q What's your understanding now?

A My understanding is that's not coming to me.

Q Now, let's take for a moment the possibility, or let's take for a moment hypothetically that you knew back in 1997 that there was going to be periods of time when you weren't earning any new benefits under the CIGNA retirement plan. If you knew that

back in 1997 when this plan kicked in, would you [**Page 863**] have done anything different?

A Definitely.

Q What would you have done?

A I definitely would have asked my boss for more of a raise. I probably would have complained to senior management.

Q Let me ask you about asking for a raise. Have you ever had experience where you were able to negotiate a raise beyond what might have been routinely indicated for you?

A Definitely, yes. Actually, it just happened this past raise period. I just recently started a job and during my performance review in December, my manager gave me my review and we have a scale and I was ranked as a No. 3 which, if you compare that scale to our current market value, and currently I'm over my market value in my current job, that 3 ranking would indicate a zero merit increase and zero bonus.

At that time, when I saw that in December, I told my manager that in order to retain talented people in these positions, and you are not going to retain me, you need to give me a raise. Otherwise I'm looking for another opportunity.

Q And what happened?

A In March time frame, I surprisingly got a raise and a bonus, even though I got ranked as a 3 based on CIGNA's policy and chart and my market value indicated that I would get zero but I ended up getting a raise.

[**Page 864**]

Q What does the 3 mean? What's it derived from?

A Below meets. If you meet your standards or you exceed and if you exceed, you would get a one. If you just meet, you would get a 2. And if you met but you didn't meet every single standard, you would get a 3, and the chances of you getting a raise is unlikely.

Q But you got one?

A I did get a raise, yes.

Q Have you ever negotiated for a raise in the past outside the sort of routine raises?

A Yes.

Q Okay. Now, if you had been aware about how the cash balance amendment was affecting your benefits, if you knew that back in 1998, would you have used this as a bargaining chip in discussing raises?

A Definitely.

Q Are you or have you been doing anything else that you think may help remedy this problem?

A Well, currently, as I stated before, I started this new job and this job is – I'm hoping that it's going to position me to get a higher income level, and I'm thinking that that's going to help me. Plus, I'm hoping that this situation will be resolved.

Q What do you mean by "situation resolved"? Resolved how?

A I'm hoping that it's going to be resolved, that CIGNA's **[Page 865]** going to rectify itself or this case, we are going to win this case and I'm going to get what I was earned.

Q So is being here part of what you are trying to do to fix the problem for yourself?

A That's the whole reason why I'm here. I mean, I still work for the company and I still like the company, but I'm surprised on what I'm finding out through the last year or so.

MR. MOUKAWSHER: No further questions, your Honor.

THE COURT: Mr. Costello.

MR. COSTELLO: Your Honor, I'll be working with binder 8.

THE COURT: Got it.

MR. COSTELLO: Pardon me, your Honor, Mr. Charette's deposition transcript, to the extent I need it, is at Exhibit 662.

CROSS-EXAMINATION

BY MR. COSTELLO:

Q Mr. Charette, could you turn to Plaintiffs' Exhibit 8? Do you remember what that was?

MR. MOUKAWSHER: That's the white binder.

Q The white binder.

MR. COSTELLO: May I approach, your Honor?

Q Plaintiffs' Exhibit 8 -- pardon me -- and I want to ask you questions about Exhibit 3 and Exhibit 4 to Exhibit 8.

MR. MOUKAWSHER: I'm sorry, 3 and 4?

[Page 866]

MR. COSTELLO: The summary plan descriptions.

THE COURT: The two SPDs.

MR. MOUKAWSHER: I only questioned about 3.

THE COURT: Well, 3 and 4 are materially identical, are they not?

MR. MOUKAWSHER: That's why he should stick to 3.

Q As I understand it, you received Plaintiffs' Exhibit 8 in or around October of 1998, correct? Exhibit 3 to Plaintiffs' Exhibit 8. Let me make it easier. You received that Summary Plan Description in or around October of 1998, is that right?

A Yes.

Q And you glanced through it at the time you received it, is that right?

A Yes.

Q And turning to the next exhibit, Exhibit 4 to Plaintiffs' Exhibit 8, that's the 1999 Summary Plan Description, and you spent about five or ten minutes reading that document when you received it, is that right?

A I don't know the exact time, but I definitely looked at it, yes.

Q But you spent maybe five to ten minutes looking through it?

A Yes.

Q And turning to -- I'm sorry, you will have to go to the next binder, that one, yes, thank you. Turning to Defendants' ***

* * *

[Page 870]

THE COURT: So you don't want one of these lifetime jobs?

THE WITNESS: No.

Q And again, based on all of the information you received from CIGNA regarding your cash balance plan, that didn't have any effect on the amount you contributed to your 401K plan, did it?

A No.

Q And obviously, based on all of the information you received, not only from CIGNA but Mr. Moukawsher and Mr. Bruce, it hasn't affected your decision to remain employed at CIGNA, has it?

A Currently, no.

Q Do you want me to give notice for you to anyone?

THE COURT: He's hoping it's going to be fixed.

MR. COSTELLO: He's going to get a raise based on his testimony.

THE COURT: He's hoping I'm going to fix it.

MR. COSTELLO: One minute, your Honor, I think I'm finished.

Q Again, Mr. Charette, let me ask one final question. Defendants' Exhibit 664, and this was an estimate that you asked for from CIGNA back in November of 1995, right?

A That's correct.

Q And on the second page, it projects a certain monthly ***

* * *

[Page 894]

THE COURT: Everyone may be seated. Good morning.

PATRICIA FLANNERY

having been recalled as a witness, was previously duly sworn and testified on her oath as follows:

THE COURT: Go ahead, Mr. Bruce.

DIRECT EXAMINATION

BY MR. BRUCE (Continuing):

Ms. Flannery, I think when we left off, we were talking about the letters that your attorney had sent to CIGNA and that you had sent in 2005.

A Correct.

Q And you had started back to work in CIGNA in October of 2004, and at some point after that, you learned that you were in the cash balance plan?

A I started back in October of 2000.

Q I'm sorry, I said 2004.

A Yes.

Q In October of 2000.

A Correct.

Q At some point subsequent to that, you learned that you were being put in the cash balance plan?

A That's correct. Like early 2001.

Q Okay. Then you got an annual statement of your -- that showed an opening account balance of about $16,000?

A Yes, I did.

[Page 895]

Q Okay. And had you ever received any type of a worksheet to show how the $16,000 was derived?

A No, I did not receive anything.

Q Okay. And at some point in 2005, did you do something about that?

A In 2005, I wrote to John Arko, I think the first one was in February, I think the second letter was in May, and I sent it certified and I didn't get an answer so I contacted an attorney because I felt like no one was giving me any answers, and I thought maybe if the attorney could write the letter and get the plan documents, that maybe someone could explain to me why I was put in this -- why I had this $16,000 rather than the monthly pension I would have received four months after I started of $586, I think it was.

Q Okay. And if you look in binder 5 at Exhibit 155. Do you see that, the white binders?

A Okay.

Q Can you identify Exhibit 155, what that is?

A Yeah, I had called Prudential and contacted a woman named Joann Pelletier, that's the spoken who responded on the phone, and I did this along with contacting the attorney.

Q Okay.

A And I had asked her, I had asked her to recalculate the pension, if that was a possibility that I could get it recalculated, because I really thought there was some kind of **[Page 896]** error made.

Q Okay. So at some point, you got this letter that's Exhibit 155 and is dated October 13th, 2005.

A Yes, so when it came back, it was still $16,101.

Q Did you notice anything on that worksheet about how the benefit had been calculated?

A There was an accrued benefit kinds of conversion present value factor which equaled the equal account balance but what I was trying to find out how that was created for me.

Q And what was the accrued benefit that was shown there?

A $3,051.

Q And what would that equal as a monthly benefit?

A It was like $200 some dollars a month I think.

Q How would that compare with the number you had received back in 1992?

A Well, it was a lot less. That's why I was so concerned. Because I would have never went back to work if I had known I was going to jeopardize my pension.

Q Okay. Did you call Ms. Pelletier after receiving that?

A I did. I talked to her I think a couple of times. At one point, I more or less said I would like it

recalculated and I would like this in two weeks and if it wasn't done in two weeks, would she please call me back and tell me why it wasn't done in two weeks.

Q Okay. Did you get anything subsequent to that from **[Page 897]** CIGNA?

A No. She called me back in two weeks and told me it wasn't done but in the following week, it would be done and I wasn't sure whether someone told her to do it because I had contacted an attorney at this point, I'm not really sure but that seemed to have moved it a little bit, although I don't know that for sure.

Q And if you look at Exhibit 156 in the same binder, is this a letter that you received?

A Yeah, I received this early in 2006, you know, this year I received this, and what it said was indeed, there was a mistake being made, that was made.

Q And how much was the mistake?

A My opening balance should have been $51,505.45.

Q Did that show a different accrued benefit?

A Yes, it did.

Q And what was the amount of that?

A $9,762.

Q And about how much does that translate to as a monthly benefit?

A I think it was 800 and some dollars.

Q Did you call anyone at CIGNA or Prudential about that, to see what had happened?

A I did call her after that to ask her to explain to me how that was done. She never returned my phone call.

* * *

[Page 904]

Q Okay. And when you were looking at going back to work with CIGNA in 2000, were you concerned about your retirement benefits?

A No, I wasn't, because after I got this letter, I had nothing that came to me that said otherwise, so that's when I asked about my pension with the HR person and she said: You will get your pension and your time would be bridged.

Q Was that important to you, that your time be bridged?

A Absolutely. I would not have gone back to the job had I known that I would -- or else I would have negotiated for a lot more money, which I don't think at that point, the job would have paid more money because the job, the job was there and actually I took a cut to come back to get back in to make, you know, to bring my pension benefits up.

Q And how much of a cut did you take?

A It was a couple thousand dollars, I think, from the last time I had worked but it was, actually, it was actually a lower job level.

Q And were you aware at the time when you came back to work with CIGNA that if you had gone to work for a different employer, that you could have sent in a retirement application to CIGNA --

A Yes, and that's what I would have done. Definitely would have done.

Q And what are your retirement plans now?

[Page 905]

A Well, I feel I may have to work to 65 in order to have more money to live in the style I'm accustomed to.

Q And do you have a target in terms of replacing your income when you are retired?

A I may work on my own, doing my hobby type thing that I did once as a business, which is calligraphy and picture framing.

Q But do you have a goal in terms of replacing a percentage of the income that you get now, as to you think would be necessary to maintain your standard of living?

A I did -- well, I don't have a particular figure. I just, I guess a monthly figure, I know how much money I want to make per month.

Q And how about 401K contributions, what have you been doing on 401K?

A Well, in the beginning I didn't contribute as much as I could. I think I contribute about 15 percent now.

Q Since when did you start contributing 15 percent?

A I think, I'm not 100 percent sure but I think, after I found out about my pension, I started putting more money into my 401K.

Q And at some point, did one of your colleagues, I believe you mentioned Susan Lahoda?

A Lahoda, yes.

Q She was the person whom you heard about the job from in **[Page 906]** October of 2000?

A That's correct.

Q And did she have some type of a spreadsheet for calculating pension benefits?

A She did. Actually, I think she got it off the manager and it was, it was some in-house calculation because I know it wasn't something she could have created. It was a pension estimate. I think I provided you with that.

Q Well, if you look in the black binder, Exhibit 706. Can you tell us what 706 is?

A This is the calculation I asked Susan to put in with my salary if I retired at 62 and what I would get, you know, at the different ages and --

THE COURT: Is this 706 or 707?

MR. BRUCE: I think it's 706.

THE WITNESS: 707.

THE COURT: 706 that I'm looking at is an e-mail string.

MR. COSTELLO: 707, your Honor.

MR. BRUCE: 707.

THE COURT: Okay.

Q And you've got 707.

A I got 707.

Q Thanks.

THE COURT: All right, I'm sorry, go ahead.

[Page 907]

Q So the data on here is an approximation of your data?

A Correct. I asked her to put it in and produce it for me.

Q Okay. And is this calculating your pension benefit under the cash balance plan or under CIGNA's old pension plan?

A This was under the old pension plan because Susan was under the old pension plan also.

Q Okay. Are most of the people where you work still under the old plan?

A That's correct, most of them are. Most of them couldn't even relate to what I was talking about because they had, they had no idea.

MR. COSTELLO: Your Honor, objection. Strike the last comment.

THE COURT: I will allow it for purposes of her knowledge and information and not for purposes of the truth of the statement.

Go ahead.

MR. BRUCE: Okay.

Q And what dollar amount did the spreadsheet produce for you at age 62?

A I would get a yearly pension of $18,540 and a month pension of $1,545 at age 62.

Q Okay.

MR. COSTELLO: Your Honor, given the way this exhibit was just used, I certainly don't think it can be **[Page 908]** submitted for the truth of the matter asserted. The testimony was that a manager got this spreadsheet from somewhere and did some kind of

calculation for Ms. Flannery, and I don't see how that can have any relevance to anything.

THE WITNESS: It was on the CIGNA system.

THE COURT: She obtained this from the CIGNA system?

THE WITNESS: Correct.

MR. COSTELLO: Your Honor, I don't --

THE COURT: Maybe we need to do more foundational work but if this is a calculator that CIGNA provides its employees, and they just plugged in information.

MR. COSTELLO: There are calculators that CIGNA provides to its employees. I just don't know what happened here. All I know is there was some calculation apparently done by someone who isn't here and now that calculation I guess is being offered for the truth of the matter asserted.

THE COURT: Is it being submitted for the truth?

MR. BRUCE: It's being -- Ms. Flannery wanted to find out what her benefits would have been under the old plan.

THE COURT: Here's the thing: Does anybody dispute -- maybe just get this out -- does anybody dispute that if they never adopted the cash balance plan and people like Ms. Flannery had just continued merrily along under Part A, they would have -- and continued to work, they would have a larger benefit than they have under this conversion?

[Page 909]

MR. COSTELLO: We don't dispute. We also don't dispute that an error was made with Ms. Flannery and we corrected it.

THE COURT: I want to know more about the error because I'm very concerned. I'm concerned about disclosures, I really am -- you just ought to hear that loud and clear -- to these people who work very hard for their company and so, you know, if errors occur, I understand that. Errors do occur, but ordinarily people have the common courtesy to explain how it happened, what the nature of the error was, and why it took four years or whatever of trying to get it repaired.

Now, you may decide: Judge, you don't deserve an explanation for that and nor do the plaintiffs and that's tough luck, and that's fine, and that's your prerogative.

But somebody ought to explain it and tell me --

MR. COSTELLO: Sure.

THE COURT: -- that this is a one off, these things happen; or this is something more systemic because I'm concerned, having heard the testimony from Prudential, that they have no written procedures, they just kind of look at these things and people go do them.

If there are errors that are happening, I am concerned about that and CIGNA ought to be concerned about that.

[Page 910]

MR. COSTELLO: Sure, absolutely, your Honor. And you've heard one side of the story --

THE COURT: I understand.

MR. COSTELLO: -- from a few witnesses when there are 60,000 plan participants.

THE COURT: I understand that, and that's why all I'm saying is, I want to hear from you and I want to hear testimony from you.

MR. COSTELLO: Sure, and you will.

THE COURT: Explaining these things and someone can get on and say, uh, this is a one off thing, we don't know why it took so long but we fixed it and corrected it and it will never happen again because of all these proceedings we put into place. I don't mind hearing that, but I need someone to explain it to me.

As to this calculator, if it's submitted for the purpose of showing that she would do better had they never adopted the cash balance plan, I don't think that's disputed.

MR. BRUCE: I think it's submitted for the purpose that she took some self-help measures to try and find out how much, and this is what she obtained from a colleague.

THE COURT: Okay, for that limited purpose, it can come in, but nothing else. Okay.

MR. BRUCE: Okay. That's all I have.

THE COURT: Okay. Mr. Costello, your witness.

* * *

[Page 916]

Q And you said if you knew what you know now about your pension, you never would have accepted employment with CIGNA?

A Absolutely.

Q In other words, if you knew how low your pension benefits were going to be, you never would have accepted employment with CIGNA?

A Absolutely.

Q That's your testimony?

A Yes.

Q But you are still working for CIGNA now, right?

A Yes, I am.

Q And if we accept your testimony, you've known that your pension is, using your words, considerably less than you've expected since July of 2001, right?

A Um hum.

Q Is that a yes?

A That's a yes.

Q And that's more than five years ago, correct?

A Yes.

Q And you've still worked for CIGNA that entire time?

A That's right.

MR. COSTELLO: One second, your Honor.

Q Now, going back to Defendants' Exhibit 705, and the last two pages, the two letters you sent to Mr. Arko?

A Yes.

[Page 917]

Q How did you know to send those letters to Mr. Arko?

A I went to, I went to an hour conference with a lawyer in town and she suggested that I write for the SPDs for my pension going back to 1979.

Q Okay. But you already had some SPDs in your possession at that point, didn't you?

A I don't recall that I do.

Q Well, read the first paragraph of your letter to Mr. Arko. I'm looking at your February 29th, 2005 letter, Supp D 1384, doesn't it say, "According to the Summary Plan Description for CIGNA plan Part A revised" --

A I must have. I may have given that to the lawyer. I don't remember.

Q You had that Summary Plan Description in your possession in 2005, or you don't remember one way or the other?

A I don't remember. I don't remember. I guess I did.

Q Okay. You don't remember whether you had the Part B Summary Plan Description in your possession at that time as well?

A I don't think I did. I don't know.

Q You don't know. Okay. And you did get a response or what you consider to be a response to this letter in I think you said October of 2005, is that right?

A I got a response from a Tamika Strickland saying she would send me the documents within two weeks and she was **[Page 918]** sorry, you know, for the confusion and whatever.

Q Now, and you are saying she never sent you the documents?

A She never sent me the documents.

Q And turning to Defendants' Exhibit 708, and I'm asking you to look at the third and fourth pages of that exhibit. Do you see the third and fourth pages?

A Well, I see the letter from October 13th and the summary after that.

Q Are there two other pages to that exhibit?

A Yes.

Q And it's another letter?

A It's another letter with a date.

MR. BRUCE: He's going over the two exhibits that we just went over as Plaintiffs' 155 and 156.

MR. COSTELLO: That's fine. It's the same letter, I'll stipulate to that, but I didn't have the plaintiffs' exhibit number in front of me, your Honor, so I wanted to make sure you saw that.

Q This is the letter you received, a letter you received, from Ms. Pelletier in January of 2006?

A Yes.

Q Okay. And it references in the fourth paragraph that the Part B Summary Plan Description for CIGNA is available to you online, on the Internet?

A It is.

[Page 919]

Q Did you go then to the Internet to get that Summary Plan Description?

A No.

Q Were you aware that the Part B Summary Plan Description had been available to employees on the Internet even earlier than 2006?

A I wasn't aware of that.

Q Okay.

A And to be honest with you, I have recently looked at it and I don't understand it.

Q I understand. And did you ever go online to try to see the Summary Plan Description while you were -- prior to this point, 2006?

A I don't recall.

MR. COSTELLO: I have no further questions, your Honor.

THE COURT: Mr. Bruce, do you have anything?
MR. BRUCE: Just a couple, your Honor.

REDIRECT EXAMINATION

BY MR. BRUCE:

Q If we continue to look at that, we'll use defendants' exhibits since it's open to that page, but in Exhibit 708, the January 11th letter --

A Yes.

Q -- the second paragraph says that "after a careful ***

* * *

[Page 921]

Q And did you have any of your friends at work who were in the Part B cash balance plan?

A No. Everybody was like my age and most of them were in Plan A.

Q Okay. So some of them may have had the Part A Summary Plan Description?

A That's correct.

Q Okay. And you mentioned earlier. Going back to work with CIGNA in 2000. Were there other places where you could look for work in 2000?

A There were. I could have gone to other places. I could have gone to someplace like Blue Cross/Blue Shield, same type of job.

Q And were you also continuing to make money from self-employment?

A I did it more like a hobby, somewhat.

Q Okay.

MR. BRUCE: Thank you.

MR. COSTELLO: Nothing more, your Honor.

THE COURT: Could I just ask, on Exhibit 230, and Ms. Flannery's not the one presumably to answer this but will someone explain to me whether or not this, if I'm reading this correctly, that as of 2006, her minimum lump sum benefit was larger than her cash balance benefit? Do I read that correctly? $89,000 some odd being the minimum and $86,000 ***

* * *

LAWRENCE SHER

[Page 1008]

feedback."

A Right.

Q I didn't have any questions about it other than to point it out to you and to ask you if there was anything that you thought was of note based on the testimony that you've heard this week.

A Well, not really. I think it sort of speaks for itself. Just like any program, any program that an employer has or particularly when you switch from one to the other, there are going to be, you know, positively perceived aspects to it and negatively perceived aspects to it.

THE COURT: Can I focus a little bit on this wearaway phenomenon?

THE WITNESS: Certainly.

THE COURT: I guess the question I have, again it's wholly independent with what the law is, I'm just trying to understand the economics of these plans. Would it be typical to expect, for a decent sized portion of an employee population, that they might go as long as five or six years before they would actually cross and get into the positive on the conversion? That just seems like a long time to expect the benefits not to actually be increasing.

THE WITNESS: I think you have to, first we have to, look at each individual situation. Where, what plan you are coming from, where you are going to. Analyze the individual **[Page 1009]** design and analyze, I think as the earlier testimony was at least beginning to get at, and that is: What are the causes of this phenomenon?

THE COURT: Yes.

THE WITNESS: And how many of them are sort of a byproduct of what you are doing, you are chang-

ing from one paradigm to the other. I would characterize the early retirement as sort of a byproduct, as you indicated earlier, your Honor, that what we talked about is a natural thing for the early retirement to have that impact.

Now, what companies generally do to deal with that is exactly what CIGNA and many others have done, and that is they either have, you know, a minimum benefit of the prior plan continuing for the older individuals or in CIGNA's case, they had a large group of people, large in the sense that the -- all you needed was, you know, assuming you had at least nine years of service and you were hired before 1989, all you needed to have was 45 points, age and service combined. That's a broad group of people.

So all of those people were sort of insulated from the early retirement effect. Now, I understand that others weren't but --

THE COURT: But going into a plan like this, would you expect there to be, you know, reasonably significant portion of your employee population who could expect to not **[Page 1010]** add to their minimum benefit for periods of between three and five years?

THE WITNESS: I think it depends. I mean, the early retirement is one factor and I think I just tried to get across, I hope that was clear, as far as how CIGNA and other companies have dealt with that.

THE COURT: Right.

THE WITNESS: One approach is to do this grandfathering which is suggesting that CIGNA did it for a large group of people, not for everyone. So there are some people who are getting that early retirement, who could have that early retirement

wearaway and that could last several years, the early retirement wearaway.

The other major effect on wearaway are interest rates, and that's I think particularly when you focus on wearaway as it affects normal retirement benefits, that is what has come into play in this and many other situations because of falling interest rates.

THE COURT: I see.

THE WITNESS: You know, going into the design, I think, you know, people recognized the possibility of this occurring, but you don't know which way interest rates are going to go, just as likely to go up or down. I think that's what most people believe.

THE COURT: Right.

* * *

[Page 1019]

leaves and then they say, okay, but wait a minute, you can't get less than what had been accrued under, you know, under the formula.

THE COURT: Right.

THE WITNESS: With the old more favorable retirement reduction, you get early retirement wearaway there as well.

THE COURT: So in designing these plans, would it be typical that you or the consultants in the company would try to make some estimates of wearaway for the employee population and then discuss potential mitigative solutions or not?

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: That's part of the whole process, your Honor, of designing both the new program and the transitioned benefits. Grandfathering deals, you know, with that most directly and then there are other techniques that are used to try to mitigate the impact to the extent it's felt, you know, appropriate.

THE COURT: And was that done here, do you know?

THE WITNESS: I don't -- well, as far as exactly what was done in the process, I don't know. I wasn't involved in it.

THE COURT: We are going to take a break right now, let's take about a 15-minute break and then we'll go right through to 1:30, okay?

* * *

[Page 1029]

A Well, you have, I think you have, this 30, free 30 percent benefit, so to the extent that that gets into the, you know, the protected benefit, it would tend, that aspect tends to, you know, exaggerate the wearaway effect because you are comparing a cash balance account, which was determined without regard to the free 30 percent with a minimum that has it so to the extent that it's in there, it's going to increase the wearaway effect or perhaps even bring it about.

Q What if a participant were to -- was eligible for the free 30 or had met certain of the eligibility for the free 30 at the time of the conversion but subsequently got divorced from their spouse or had a spouse who passed away. What would the effect be

on the wear -- what would the wearaway effect be under those circumstances?

A My understanding and recollection is that the 30 percent only gets in there, into the minimum, if at the time of benefit commencement, the employee is married. So it would go -- it would just disappear, the additional impact I think would disappear.

THE COURT: Can I ask you, go at this a little differently, too: In 1998, was it predictable and known to CIGNA, because of the various things we talked about -- probably not with respect to interest rates so much but the early retirement subsidy sort of bringing that out and the preretirement mortality, in fact people's opening balances **[Page 1030]** would not be the -- would be lower than their minimum protected benefit?

Would that be known by someone sitting there looking at the plan, analyzing them, that the opening balances for people by and large -- maybe not for everybody but by and large -- would be less than their protected accrued benefit under the old plan?

THE WITNESS: I think certainly benefit projections, you know, could have been done to get at your question, your Honor. I think what complicates this really is, you know, I know you prefaced your question by saying disregarding interest rate changes. The problem is it's hard to disregard something but yes, absent that, yes.

THE COURT: Listen, we all have to predict things. Taking normal old regular old interest rate assumptions as you are standing in 1998, you still would have known that the opening balances for some sizeable group of employees, not obviously all, would be less than their protected benefit under the

old plan? You would know that because you know mathematically that you are eliminating the early retirement subsidy.

THE WITNESS: Yes.

THE COURT: You are eliminating the free 30, which they may get ultimately. Who knows where interest rates are going to go but you have some assumptions about those things **[Page 1031]** and so you can predict and you would know, would have known this in 1998, that in fact people's opening balances would be, to some degree, I don't know what the amount would be, lower than their prior protected benefit.

THE WITNESS: I think you could certainly, you know, do projections to illustrate under those, under whatever assumptions you make, no question you could do it.

THE COURT: Would people have done that in designing the plan, done some calculation?

THE WITNESS: People do different things. I don't know what CIGNA did but people do various kinds of analyses including projections using various assumptions as to what might happen in the future. They look at different segments of the population. That's how they design the transition provisions essentially, by looking at the potential impact, understanding that, as we've been discussing, that especially when it comes to interest credits and conversion, interest conversion factors, that things can jump all over the place.

THE COURT: Right.

THE WITNESS: You know, and that's why, you know, companies then turn around and decide to put

in grandfather benefits, they tend to look at the population where they think these kinds of effects, including even broader than wearaway the whole notion of had the prior plan continued, you know, people gain certain expectations.

[Page 1032]

THE COURT: Sure.

THE WITNESS: Although the law may not, I don't think it does, protect those but nevertheless employees develop some type of expectations and the whole process involves all those considerations and usually involves a lot of trade-offs. We are going to do this, we are going to do that, we are going to increase the match in the 401K plan, we've got these groups of people, those groups of people, and they make decisions, you know? And then they go forward from there.

THE COURT: Okay.

THE WITNESS: That's the process.

THE COURT: I understand that. But I guess what I'm saying is that having gone through that iterative process and making all the changes, when it comes to rest at some point, again making some assumptions about interest rates and believe me, I assume there are lots of assumptions about interest rates all over, in the planning for this, one could have some sense, one could have predicted with some -- have some prediction of whether there was going to be no wearaway; that the wearaway was minimal, you know, two months for most employees; or on average, depending upon where you fell in the spectrum, it could be two to three years. That would be some quantity that might prove to be wrong but

would have been at least knowable at that time, right?

[Page 1033]

THE WITNESS: Yes, I think at least my experience, that's often done, and what else is often done is that you do look at what the potential different interest rate scenarios might be so that in some cases, you know, if you look at interest rates going down, you look at interest rates going up and you say, oh, this could have, if interest rates go up, that could have a dramatically different impact than if interest rates go down. All of that or portions of that are often, at least in my experience, part of the process.

THE COURT: Okay.

MR. BLUMENFELD: May I continue?

THE COURT: Yes, you may.

MR. BLUMENFELD: Great.

Q If you could turn to Plaintiffs' Exhibit 6, again in binder 1.

A I see it.

This is a revised Exhibit 3 to Mr. Poulin's supplemental report. Have you seen this before?

A This looks familiar, yes.

Q Have you actually done some analysis with respect to Ms. Glanz's wearaway effect, assuming different things than those that were assumed by Mr. Poulin?

A Again, just like in the other example on Ms. Broderick earlier, I did some, you know, rough type estimates.

Q And what did you determine?

* * *

CLAUDE POULIN

[Page 1503]

of benefit accrual that is not indexed with salary, so that by general reasoning and from these calculations I would conclude that this is not surprising or this is not an anomaly.

THE COURT: It's basically from this data and your general reasoning as opposed to testing with any groups of data or model?

THE WITNESS: That's correct, it's based on the prior benefit formula compared to the new formula.

THE COURT: I got it. Go ahead.

Q Is that consistent with Mr. Sher's analysis?

A It is.

Q I want you now to turn to Exhibit 739 and we'll see if Mr. Sher's analysis, your analysis and some of these costing numbers have a relationship. Turn to 739 and the Bates stamp on the bottom, turn to supplemental D 025709.

MR. BLUMENFELD: 025 -- what was that, Tom?

MR. MOUKAWSHER: 709.

THE COURT: Okay.

Q Did you have an opportunity to look at the expense projections on this page?

A Yes, I did.

Q Did you also have a chance to look at the projections on 025723?

A I believe I've seen 2573 earlier but I'm less familiar with 25709 but they seem to go in the same direction as that **[Page 1504]** the sum -- this is what's called a FAS expense projection and it shows that a reduction in the FAS expense, approximately I would say 10 percent, from --

THE COURT: From which alternative?

THE WITNESS: I'm looking at year one. Year five, year five, 7.

THE COURT: Alternative three seems to be higher, am I reading this wrong? Am I just looking at the bottom line number for this column? Just take year one expense. I'm sorry, year 20 expense, just run down to the bottom.

THE WITNESS: Year 20.

THE COURT: Alternative three looks like 76 million whereas a current program is 64 million? Alternative six is 49 million, then back up for alternative seven to 62. It would depend on which alternative, right?

THE WITNESS: Yes.

THE COURT: It's not true for all alternatives. Do we know which alternative was chosen?

Q Look at alternative 6A, Mr. Poulin. I believe that that's the alternative closest to what was chosen.

THE COURT: I see.

MR. BLUMENFELD: Your Honor, just to be clear, this isn't rebuttal. I understand that these are new documents --

THE COURT: Well, in the sense that, I was thinking about that as well, as Mr. Moukawsher was

asking his question, **[Page 1505]** and I suppose it's not rebuttal to testimony but since you put these in in your case after they had already rested --

MR. BLUMENFELD: I understand, your Honor. I just wanted to be clear this isn't in rebuttal to anything Mr. Sher testified.

MR. MOUKAWSHER: I was going to relate it to Mr. Sher's projections and his.

THE COURT: I know you are trying.

MR. MOUKAWSHER: Just protecting myself.

Q Looking at that, you said the cost expense savings were --

A If alternative 6A is the closest to the actual approach that was selected, then in year first, I understand that if I can read these numbers right, it went from 79.6 to 70.1, which would be 9.5 percent -- 9.5 million reduction which would be more than 10 percent of 79 million, 13 or 14 percent, and would be the same in year five, it would go from 79 to 67, 12 million so that this, let's assume that it's approximately a 13 percent reduction and that this only applies, this is for the whole plan.

And it does not -- it also, it applies to those people who were grandfathered in the old plan, people who were not converted to the -- to Part B so that for those people who are not grandfathered in, and who represent the population that went to the cash balance plan, and if they represent 40 percent of the overall liabilities, then in that case, it **[Page 1506]** would mean that the overall reduction for those people would be closer to 25 percent.

Q Okay. You see this projection on the bottom right-hand corner was from 19 June '97, before the cash balance plan was adopted?

A Yes.

Q Based upon your analysis and Mr. Sher's analysis, while CIGNA was clearly projecting cost savings as a consequence of the conversion, does this appear to be, based on you and Mr. Sher's analysis, an underestimate of how much they saved?

A We would need to know, we would need to do an individual analysis for each person but based on this, assuming that this includes liabilities for retirees, it includes liabilities for people who are not affected by the conversion, it seems to be on the low side.

If my 25 to 30 percent cost saving is appropriate, if in fact for those people who were affected, the overall result would be 50 percent reduction in the ultimate benefit payable at normal retirement age, but it is generally consistent with the fact that there were expected cost savings.

Q I'm going to turn to a new exhibit shortly.

A I'm fine.

Q You are okay? All right. Let's turn then to Exhibit 4, tabs 1 and 2. I want to ask you now about Mr. Sher's ***

* * *

[Page 1517]

the date of the change so it would be possible, similarly in a cash balance plan context, to provide ad hoc increases to account balances periodically to take

into account the fact that they have been affected, that the benefits are affected by reduced or decreasing interest rates.

Q Okay. So if a plan sponsor wanted to have an A or B plan, simply because they believed that there were some benefits from having it, does not mean that there has to be long wearaway provisions caused by falling interest rates, is that your opinion?

A Well, at the present time, it would be impossible to do that because the law has been changed since the Pension Protection Act, but let's assume ten years ago.

Q Talk about '97?

A In '97, it would have been possible to do that, yes.

Q Okay. If you had been CIGNA's actuary in '97, understanding the options that were in front of you and the wearaway examples that you had, what would you have advised them about the prospects of wearaway as of 1997?

In other words, was it highly likely there would be some wearaway to a significant number of participants or based on your knowledge, would it have not been likely?

MR. BLUMENFELD: Objection.

THE COURT: I'm going to sustain the objection. Ask it a different way. Just say, you know, knowing what you know **[Page 1518]** about the CIGNA plan and being an actuary, could you have predicted in 1997 that there would be substantial periods of wearaway for a substantial population?

THE WITNESS: Yes, your Honor, because that's the purpose of having the greater of A or B.

THE COURT: That's fine. Even without knowing then -- are you saying that even without being very clairvoyant about what interest rates would do, you still could have predicted that, that that would have been inevitable?

THE WITNESS: The mere fact, your Honor, that the benefits were converted in the opening account balance that were the normal retirement benefits payable at age 65 with the early retirement subsidy, the fact that the free 30 percent, the fact that the Social Security supplement, that these benefits were not part of the opening account balance created ipso facto a wearaway immediately.

In addition, we live in an environment where interest rates fluctuate, and if the current rate today is 6 percent, there are no certainty that it will be 6 percent a year from now, it might be higher, it might be lower, but it's certain it will not be 6 percent.

So that it would have been possible, you know, with a certain degree of certainty, to predict that there would be wearaway at one point.

THE COURT: All right.

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANICE C. AMARA, GISELA R. BRODERICK, ANNETTE S. GLANZ, individually and on behalf of all others similarly situated,	:	
Plaintiffs,	:	
v.	:	Civil No. 3:01-CV-2361 (MRK)
CIGNA CORP. and CIGNA PENSION PLAN,	:	
Defendants.	:	

ORDER UNDER FEDERAL RULE 23(C)(1)(B)

Rule 23(c)(1)(B) of the *Federal Rules of Civil Procedure* was amended after this case was certified as a class action on December 20, 2002. See Memorandum of Decision [doc. # 61]. As amended effective December 1, 2003, Rule 23(c)(1)(B) provides that an order certifying a class action "must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)." The parties agree that the Court should issue an order in compliance with Rule 23(c)(1)(B), though they disagree about the content of the proposed order. See Defendants' Proposed Order Under Fed. R. Civ. P. 23(c)(1)(B) [doc. # 231]; Plaintiffs' Statement Regarding Class Issues [doc. # 232]. Having considered the parties' proposed orders, the Court's prior orders in

this case, and the requirements of Rule 23(c)(1)(B), the Court issues the following orders:

1. DEFINITION OF THE CLASS

The definition of the class was set out in the Court's December 20, 2002 Order, and it remains unchanged. The class consists of the following: Any and all persons who:

A. Are former or current CIGNA employees,

B. Participated in the CIGNA Pension Plan before January 1, 1998, and

C. Have participated in the CIGNA "Part B" Pension Plan at any time since January 1, 1998.

2. APPOINTMENT OF CLASS COUNSEL

Without objection from Defendants, the Court finds that the following counsel will fairly and adequately represent the interests of the class, and therefore the Court appoints the following to serve as class counsel:

Stephen R. Bruce,
Esquire (Lead counsel)
805 15th St., NW
Suite 210
Washington, DC 20005

Thomas G. Moukawsher,
Esquire
Moukawsher & Walsh
Capitol Place
21 Oak St., Suite 209
Hartford, CT 06106

In accordance with Rule 23(g)(1)(C), the foregoing appointment is based upon the Court's consideration of the following factors:

A. The work counsel has done in identifying or investigating potential claims in the action;

B. Counsel's experience in handling class actions and claims of the type asserted in the action;

C. Counsel's knowledge of the applicable law; and

D. The resources counsel have committed, and will commit, to representing the class.

3. DESIGNATION OF CLASS ISSUES

In designating the class issues, the Court relies upon the Third Amended Complaint [doc. # 165], for which leave to amend was granted on February 15, 2006 [doc. # 164]. In contesting the class claims, Defendants have identified class, sub-class, and individual defenses. The recitation below generally sets forth the claims of the parties as they have chosen to describe them, with such specificity as is required to understand the claim. The Court expresses no opinion on the merits of the claims or defenses of the parties, and therefore the parties should attach no significance to the particular phraseology chosen to describe any claim or defense:

COUNT 1 – "WEAR-AWAY" CLAIMS, ISSUES, AND DEFENSES

A. Class-wide claims, issues and defenses:

1. Whether the terms of CIGNA's cash balance plan violate the nonforfeiture and anti-backloading rules in ERISA § 203(a), 29 U.S.C. § 1053(a), and ERISA § 204(b)(1)(B), 29 U.S.C. § 1054(b)(1)(B).

   (a) Specifically, Plaintiffs allege that Section 7.3 of CIGNA's Pension Plan makes payment of the benefits de-

rived from the cash balance credits offered after January 1, 1998 conditional on whether a participant "elects" to forego receipt of his or her previously-earned benefits in annuity form, and that this provision violates the nonforfeitability rules in ERISA § 203(a), 29 U.S.C. § 1053(a).

(b) Plaintiffs also allege that under CIGNA Pension Plan there were plan years in which participants had no additional accruals and that this violates the "anti-backloading" rule in ERISA § 204(b)(1)(B), 29 U.S.C. § 1054(b)(1)(B).

2. Whether the relief sought by Plaintiffs in Count I is available under ERISA.

B. Sub-class and individual issues and defenses:

1. Whether any individual class member was likely harmed by the alleged violations in Count 1.

2. Whether any individual class member's claim in Count I is barred by a release executed by that individual.

3. Whether any individual class member's claim in Count I is barred by the applicable statute of limitations.

4. Whether any individual class member exhausted the Plan's internal claim and appeal process for the claim asserted in Count I.

COUNT 2 – "SUMMARY PLAN DESCRIPTION (SPD)" CLAIMS, ISSUES, AND DEFENSES

A. Class-wide claims, issues, and defenses:

1. Whether CIGNA adequately disclosed material modifications to the CIGNA PENSION Plan's formula and the features that may result in reduction, losses, or forfeitures of benefits that a participant might otherwise reasonably expect to receive as required by ERISA § 102, 29 U.S.C. § 1022 and 29 C.F.R. § 2520.102-1 through 102-5.

    a. Specifically, Plaintiffs allege that neither the Retirement Information Kit distributed in 1997 (which CIGNA purportedly characterized as a Summary of Material Modification (SMM)) nor the updated SPDs that CIGNA distributed in 1998 and 1999 describe periods without additional benefits, benefit reductions, conditions on receipt, or other allegedly disadvantageous features of the cash balance design and that CIGNA failed to provide an updated SPD or SMM to any terminated vested participant with notice of an amended "rehire rule," all in violation of ERISA § 102, 29 U.S.C. § 1022 and 29 C.F.R. § 2520.102-1 through 102-5.

2. Whether ERISA permits a plan participant to recover benefits based on the terms of an SPD instead of the actual terms of the plan.

3. Whether the individual account statements and Total Compensation Reports that were provided to Plan participants preclude any finding of likely prejudice and establish harmless error.

4. Whether the Plan Administrator had the responsibility for distributing an SPD that complied with ERISA, such that Plaintiffs' failure to name the Plan Administrator as a defendant precludes Plaintiffs' claims.

5. Whether Plaintiffs' claims regarding the SMM are properly before the Court.

6. Whether the relief sought by Plaintiffs in Count II is available under ERISA.

B. Sub-class or individual issues and defenses:

1. Whether any individual class member was likely prejudiced by any of the violations alleged in Count II.

2. Whether any violation alleged in Count II was harmless error as to any individual class member.

3. Whether any individual class member's claim in Count II is barred by the applicable statute of limitations.

4. Whether any individual class member's claim in Count II is barred by a release executed by that individual.

COUNT 3 – "AGE DISCRIMINATION" CLAIMS, ISSUES AND DEFENSES

A. Class-wide claims, issues and defenses:

1. Whether the Plan's alleged reductions and cessations in benefit accruals violate the age discrimination provision in ERISA § 204(b)(1)(H), 29 U.S.C. § 1054(b)(1)(H).

   (a) Specifically, Plaintiffs allege that CIGNA's cash balance pension formula inevitably reduces the rates at which older employees earn retirement benefits compared with the rates at which younger employees with the same salary earn retirement benefits, in violation of ERISA § 204(b)(1)(H), 29 U.S.C. § 1054(b)(1)(H).

   (b) Plaintiffs also allege that CIGNA's transition to a cash balance pension formula caused the rate of benefit accruals for older employees who were eligible for early retirement benefits to cease altogether for a period of years, in violation of ERISA § 204(b)(1)(H), 29 U.S.C. § 1054(b)(1)(H).

2. Whether the relief sought by Plaintiffs in Count III is available under ERISA.

B. Sub-class or individual issues and defenses:

1. Whether any individual class member's claim in Count III is barred by the applicable statute of limitations.

2. Whether any individual class members claim in Count III is barred by a release executed by that individual.

COUNT 4 – "204(h) Notice" CLAIMS, ISSUES AND DEFENSES

A. Class-wide claims, issues and defenses:

1. Whether CIGNA provided a notice of significant reductions in the future rate of benefit accrual from the cash balance formula, or notice to rehired employees of the modification to the rehire rule, as required by ERISA § 204(h), 29 U.S.C. § 1054(h).

   (a) Specifically, Plaintiffs allege that by converting to a cash balance pension formula with allegedly significantly reduced benefits without providing warning to participants of the reduction in the future rate of benefit accruals, CIGNA violated ERISA § 204(h), 29 U.S.C. § 1054(h) and Treas. Reg. 1.411(d)-6, Q&A 10 (as in effect in 1997).

   (b) Plaintiffs also allege that by implementing the amended "rehire rule" without notice to terminated vested participants of significant reductions in their future rate of accruals, CIGNA violated ERISA § 204(h), 29 U.S.C. § 1054(h).

2. Whether CIGNA's Retirement Information Kit, Part B SPD, or Signature Benefits Newsletter satisfied the disclosure requirements of ERISA § 204(h), 29 U.S.C. § 1054(h).

3. Whether ERISA required a § 204(h) notice to terminated vested participants who were not accruing benefits under the Plan at the time it was amended.

4. Whether the Plan Administrator had responsibility for providing any § 204(h) notice required by ERISA, such that Plaintiffs' failure to name the Plan Administrator as a defendant precludes Plaintiffs' claims.

5. Whether the relief sought by Plaintiffs in Count IV is available under ERISA.

B. Sub-class or individual issues and defenses:

1. Whether any individual class member was likely to suffer a significant reduction in the rate of future benefit accrual as a result of the amendment adopting the Plan.

2. Whether any individual class member was likely prejudiced by any violation as alleged in Count IV.

3. Whether any violation alleged in Count IV was harmless error as to any individual class member.

4. Whether any individual class member's claim in Count IV is barred by the applicable statute of limitations.

5. Whether any individual class member's claim in Count IV is barred by a release executed by that individual.

COUNT 5 – "RELATIVE VALUE/ANTI-CUTBACK" CLAIMS, ISSUES, and DEFENSES

A. Class-wide claims, issues, and defenses:

1. Whether CIGNA disclosed the relative value of optional forms of benefit available under the Plan, including the extent to which any optional forms of benefit are subsidized as required by Treasury Regulation 1.401(a)-20, Q&A 36 and/or Treasury Regulation 1.417(a)(3)-1.

   (a) Specifically, Plaintiffs allege that neither CIGNA's SPD nor its benefit election materials disclose that a lump sum payment of a participant's cash balance account may be less valuable than the annuity benefits which the participant earned prior to 1998, in violation of ERISA § 205(g), 29 U.S.C. § 1055(g), Treas. Reg. 1.401(a)-20, Q&A 36 and/or Treas. Reg. 1.417(a)(3)-1 (as in effect thereafter).

   (b) Plaintiffs also allege that CIGNA violated an express provision in Section 7.1(b)(1) of the Plan document that participants will be provided "sufficient additional information to explain the relative values of the optional forms of benefits available under the Plan" and a promise in its

SPDs that participants will be "notified" if the cash balance account is less than their "old plan benefits."

2. Whether CIGNA has protected the benefits earned under the prior Plan formulas, including the present value of normal retirement benefits, the Plan's subsidized early retirement benefits, and the Plan's Free 30% survivor's benefit.

   (a) Specifically, Plaintiffs allege that CIGNA violated the anti-cutback rule in ERISA § 204(g), 29 U.S.C. § 1054(g), by failing to maintain records of previously-earned benefits, and by failing to actually provide payments based on the value of the previously-earned normal retirement benefits, the Plan's subsidized early retirement benefits, and the Free 30% survivor's benefit.

3. Whether the requirement to provide present-value relative value disclosures on the Part B election form, derived from Treasury Regulation 1.417(a)(3)-1, arose as of October 1, 2004, or January 1, 1998.

4. Whether the Plan Administrator had responsibility for publishing benefit election forms that complied with ERISA, such that Plaintiffs' failure to name the Plan Administrator as a defendant precludes Plaintiffs' claims.

5. Whether Plaintiffs have failed to identify a class representative who suffered harm from the alleged relative value violation

and if so, whether that is fatal to Plaintiffs' relative value claim in Count V.

6. Whether the relief sought by Plaintiffs in Count V is available under ERISA.

B. Sub-class or individual issues and defenses:

1. Whether any individual class member has received, or is receiving, benefits that were not calculated in accordance with the terms of Part B.

2. Whether any individual class member who has not commenced receiving his or her benefits has a ripe claim under Count V.

3. Whether any individual class member was likely harmed by any deficiency in the benefit election form.

4. Whether any individual class member was required to exhaust the Plan's internal claim and appeal process for any claim for benefits, and if so, whether any individual class member did so.

5. Whether any individual class member's claim in Count V is barred by the applicable statute of limitations.

6. Whether any individual class member's claim in Count V is barred by a release executed by that individual.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANICE C. AMARA, GISELA R. BRODERICK, ANNETTE S. GLANZ, individually, and on behalf of others similarly situated,	:	3:01 CV 2361 (MRK)
Plaintiffs,	:	Trial Dates:
v.	:	September 11-15, 2006
CIGNA CORP. AND CIGNA PENSION PLAN,	:	January 24-25, 2007
Defendants.	:	

DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFFS' PROPOSED POST-TRIAL FINDINGS OF FACT

* * *

224. Defendants admit the first sentence of the proposed finding. Defendants deny the remainder of the proposed finding on the grounds that (1) it is irrelevant, (2) the document in question is a written document whose terms speak for themselves, and (3) it misrepresents the contents of disclosures made to Plan participants in 1997 and 1998.

225. Defendants deny the proposed finding on the grounds that (1) it is irrelevant, and (2) the document in question is a written document whose terms speak for themselves.

226. Denied except as otherwise stated herein. Defendants admit that the new SPD and Supplement were produced on August 2, 2006, but deny that they were obligated under the Federal Rules of Civil Procedure or by any order of this Court to produce any additional information.

227. Admitted.

228. Denied except as otherwise stated herein. Defendants deny that Professor Stratman is an expert on the "understandability" of written communications and deny that he is an expert as to whether particular communications satisfy applicable legal requirements. Defendants admit the remaining statements in the finding of fact.

229. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman's expert report makes the statements quoted in the finding of fact and that Plaintiffs cite his testimony accurately, but deny that these statements and testimony are correct.

230. Defendants admit that in Stratman's trial testimony, he makes the statement quoted; however, Stratman qualified his testimony by stating that "maybe for a lot of people that won't happen, but it's certainly a plausible thing to happen."

231. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding

the foregoing, Defendants admit that Stratman's expert report makes the statements quoted in the finding of fact, but deny that these statements are correct.

232. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Defendants further deny that Stratman's testimony is correct.

233. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman made the statements quoted in the finding of fact, but deny that these statements are correct.

234. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman made the statements quoted in the finding of fact, but deny that these statements are correct.

235. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman made the statements quoted in the finding of fact, but deny that these statements are correct.

236. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that in Stratman's testimony, he makes the statements quoted in the finding of fact, but deny that these statements are correct.

237. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman's expert report makes the statements quoted in the finding of fact and that Plaintiffs accurately cite his testimony, but deny that these statements and testimony are correct.

238. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman's expert report makes the statements quoted in the finding of fact and that Plaintiffs accurately cite his testimony, but deny that these statements are correct.

239. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman made

the statements quoted in the finding of fact, but deny that these statements are correct.

240. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman made the statements quoted in the finding of fact, but deny that these statements are correct.

241. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman's expert report makes the statements quoted in the finding of fact and that Plaintiffs accurately cite his testimony, but deny that these statements and testimony are correct.

242. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman's expert report makes the statements quoted in the finding of fact, but deny that these statements are correct.

243. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman's ex-

pert report and trial testimony made statements quoted in the finding of fact, but deny that these statements are correct.

244. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman's expert report makes the statements quoted in the finding of fact, but deny that these statements are correct.

245. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman made the statements quoted in the finding of fact, but deny that these statements are correct.

246. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman made the statements quoted in the finding of fact, but deny that these statements are correct.

247. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman made

the statements quoted in the finding of fact, but deny that these statements are correct.

248. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman's expert report makes the statements quoted in the finding of fact, but deny that these statements are correct.

249. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman made the statements quoted in the finding of fact, but deny that these statements are correct.

250. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman made the statements quoted in the finding of fact, but deny that these statements are correct.

251. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman's expert report makes the statements quoted in the find-

ing of fact, but deny that these statements are correct.

252. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman made the statements quoted in the finding of fact, but deny that these statements are correct.

253. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman made the statements quoted in the finding of fact, but deny that these statements are correct.

254. Admitted.

255. Defendants admit that they have not identified any purported expert to read the Newsletter, Retirement Information kits, and SPDs and opine on their "understandability" or compliance with ERISA's statutory disclosure requirements; whether these documents satisfy the applicable statutory requirements is a conclusion of law.

256. Defendants deny the proposed finding on the ground that Plaintiffs, in their selective quotation of Mr. Costello, have ignored Mr. Costello's reference to the fact that Plan participants were advised that they were no longer earning benefits under CIGNA's old plan, and that under the Minimum Benefit provision, Plan participants were advised that they would get the higher of the benefit they

claimed under the old plan or their account balance under the new plan. Plaintiffs' expert Professor Stratman, conceded that this put Plan participants on notice that "there might be some circumstance in which maybe I don't earn any more" benefits for some period of time. Stratman Tr. 570.

257. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, the quoted article constitutes hearsay. The proposed finding also is irrelevant, as the articles do not address any of the communications at issue in this case. Opinions expressed in news articles or periodicals regarding cash balance plans generally have no bearing on whether CIGNA's cash balance plan violates ERISA, whether CIGNA's SPD and Section 204(h) notice satisfy ERISA's disclosure requirements, or whether CIGNA has violated Section 204(g) of ERISA. Notwithstanding the foregoing, Defendants admit that the articles Plaintiffs cite are accurately quoted in part; however, such quotes were removed from context so as to obfuscate their intended meaning.

258. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, the quoted article constitutes hearsay. The proposed finding is also irrelevant, as the opinions expressed in news articles or periodicals regarding cash balance plans have no bearing on whether CIGNA's cash balance plan violates ERISA, whether CIGNA's SPD and Section 204(h) notice satisfy ERISA's disclosure requirements, or whether CIGNA has violated Section 204(g) of ERISA. Notwithstanding the foregoing, Defendants admit that the article Plaintiffs cite is accurately quoted, but is only a partial quote.

259. The proposed finding is irrelevant as the nature of Mr. Sher's retention as a Defense expert has no bearing on whether CIGNA's cash balance plan violates ERISA, whether CIGNA's SPD and Section 204(h) notice satisfy ERISA's disclosure requirements, or whether CIGNA has violated Section 204(g) of ERISA. Moreover, neither Mr. Sher nor Mr. Poulin purport to be communications experts. Notwithstanding the foregoing, Defendants admit that testimony Plaintiffs cite in the proposed finding is accurately quoted.

260. Denied except as otherwise stated herein. Defendants admit that Mr. Arko was produced as a 30(b)(6) witness on the specific topics indicated in the Notice of Deposition. The 30(b)(6) notice of deposition requested testimony regarding compliance with Section 204(h) after December 31, 1997. Ex. 21, ¶ 2). The Newsletter and Retirement Information Kits were all prepared and distributed before that date.

261. Denied except as otherwise stated herein. Defendants admit that Mr. Arko testified that the November 1997 Newsletter was intended to satisfy ERISA Section 204(h) notice obligations because it disclosed the benefit accrual freeze for participants, which was the only reduction in (more accurately, cessation of) future benefit accruals.

262. Denied except as otherwise stated herein. Defendants admit that Mr. Arko testified that the November 1997 Newsletter was intended to satisfy ERISA Section 204(h) notice obligations because it disclosed the benefit accrual freeze for participants, which was the only reduction in (more accurately, cessation of) future benefit accruals.

263. Denied except as otherwise stated herein. Defendants admit that Mr. Arko testified that the

November 1997 Newsletter was intended to satisfy ERISA Section 204(h) notice obligations because it disclosed the benefit accrual freeze for participants, which was the only reduction in (more accurately, cessation of) future benefit accruals. Further, the proposed finding takes quotations of testimony out of context and is misleading.

264. Denied except as otherwise stated herein. Defendants admit that Mr. Arko testified that the November 1997 Newsletter was intended to satisfy ERISA Section 204(h) notice obligations because it disclosed the benefit accrual freeze for participants, which was the only reduction in (more accurately, cessation of) future benefit accruals. Further, the proposed finding takes quotations of testimony out of context and is misleading.

265. Denied except as otherwise stated herein. Defendants admit that Mr. Arko testified that the November 1997 Newsletter was intended to satisfy ERISA Section 204(h) notice obligations because it disclosed the benefit accrual freeze for participants, which was the only reduction in (more accurately, cessation of) future benefit accruals. Further, the proposed finding takes quotations of testimony out of context and is misleading.

266. Denied except as otherwise stated herein. Defendants admit that Mr. Arko testified that the Retirement Information Kits were not intended to be 204(h) notices, but he did not address whether they would satisfy the requirements of Section 204(h). The rest of the finding of fact is inaccurate and misleading.

267. Denied except as otherwise stated herein. Defendants deny the finding of fact on the grounds that the document in question is a written document

whose terms speak for themselves. Notwithstanding the foregoing, Defendants admit that testimony Plaintiffs cite in the proposed finding is accurately quoted. The rest of the finding of fact is denied.

268. Denied.

269. Denied except as otherwise stated herein. Defendants deny the finding of fact on the grounds that the SPD in question is a written document whose terms speak for themselves. Notwithstanding the foregoing, Defendants admit that the SPD describes how benefits are earned under Part B, including benefit credits and interests credits.

270. Admitted. Both parties could have called Mr. Arko to testify at trial and elected not to do so.

271. Denied. Stewart Beltz was appointed as the Plan Administrator and that appointment was communicated to Plan participants in the SPDs.

272. Defendants deny the first sentence of the proposed finding. Mr. Beltz was appointed as the Plan Administrator, as set forth in the SPDs, and ERISA specifically assigns responsibility for the distributor of the Section 204(h) notice, SMM and SPD to the Plan Administrator. Defendants admit the remainder of the proposed finding, but deny that Mr. Beltz played no role in reviewing any benefit communications.

273. Admitted.

274. Denied except as otherwise stated herein. Defendants deny the finding of fact on the grounds that the documents in question are written documents whose terms speak for themselves..

275. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is

based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Stratman's report and trial testimony. Notwithstanding the foregoing, Defendants admit that Stratman's expert report makes the statements cited in the finding of fact, but deny that these statements are correct.

276. Denied except as otherwise stated herein. Defendants deny the finding of fact on the grounds that the document in question is a written document whose terms speak for themselves. Notwithstanding the foregoing, Defendants admit that Plaintiffs have accurately quoted select portions of the document, which addresses benefit changes that occurred after Section 204(h) was amended in 2001 and new 204(h) disclosure regulations were adopted in 2003. By way of further response, the November 1997 Newsletter uses similar terminology regarding the benefit freeze. The Newsletter provides that "Employees participating in the new CIGNA Retirement Plan will stop earning benefits under the current Pension Plan on December 31, 1997." (Ex. 516, at 5 [D00611]).

277. Denied except as otherwise stated herein. Defendants deny the finding of fact on the grounds that the document in question is a written document whose terms speak for ***

* * *

393. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Mr. Stratman's report and testimony. The proposed finding is also irrelevant, as any issues related to the rehire rule have no bearing on whether CIGNA's cash

balance plan violates ERISA, whether CIGNA's SPD and Section 204(h) notice satisfy ERISA's disclosure requirements, or whether CIGNA has violated Section 204(g) of ERISA. Defendants admit that some rehires wanted to participate in the prior plan formula. Defendants admit that Plaintiffs cite Mr. Stratman's testimony accurately, but deny that this statements are correct.

394. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is irrelevant, as any issues related to the rehire rule have no bearing on whether CIGNA's cash balance plan violates ERISA, whether CIGNA's SPD and Section 204(h) notice satisfy ERISA's disclosure requirements, or whether CIGNA has violated Section 204(g) of ERISA. Notwithstanding the foregoing, Defendants admit that, to the extent that Plaintiffs offer direct quotations from said communications, such quotations are technically accurate, although incomplete.

395. Denied except as otherwise stated herein. Defendants further deny the finding of fact on the grounds that the document in question is a written document whose terms speak for themselves.

396. Denied except as otherwise stated herein. Defendants further deny the finding of fact on the grounds that the document in question is a written document whose terms speak for themselves. To the extent Plaintiffs have provided a direct quotation from the cited document, such quotation is technically accurate, though it is a partial quotation so as to obfuscate the intent of the author.

397. Admitted.

398. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is irrelevant, as communications relating to the potential state of mind of rehired employees have no bearing on whether CIGNA's cash balance plan violates ERISA, whether CIGNA's SPD and Section 204(h) notice satisfy ERISA's disclosure requirements, or whether CIGNA has violated Section 204(g) of ERISA. Notwithstanding the foregoing, Defendants deny the proposed finding except that, to the extent Plaintiffs have provided direct quotations from electronic communications, such quotations are technically accurate.

399. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, the quoted witness statement constitutes hearsay, as Defendants never agreed in advance that the direct testimony of witnesses could be submitted in statement form. Notwithstanding the foregoing, Defendants admit that the witness statement Plaintiffs cite in the proposed finding is accurately quoted, but deny the truth of those statements.

400. Denied except as otherwise stated herein. Defendants deny the finding of fact on the grounds that the document in question is a written document whose terms speak for themselves. To the extent Plaintiffs have provided a direct quotation from the cited document, such quotation is technically accurate.[12]

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[12] Defendants further respond to proposed findings numbers 400-42 herein by directing the Court's attention to paragraphs 408-34 of Defendants' Post-Trial Proposed Findings of Fact.

401. Denied. Defendants provided exemplars of statements that notified participants of what their benefits would be in different forms, including in the form of an annuity based on the minimum benefit.

402. Denied. Defendants provided exemplars of statements that notified participants of what their benefits would be in different forms, including in the form of an annuity based on the minimum benefit.

403. Denied. Defendants deny the finding of fact on the grounds that the document in question is a written document whose terms speak for themselves.

404. Defendants admit that Mr. Robinson could have elected to delay receipt of his benefit until he became entitled to an age-55 subsidized early retirement minimum benefit that was protected under Part B and that he would have been entitled to benefits in accordance with the terms of Part B had he done so.

405. Denied. Defendants deny the accuracy of Plaintiffs' description of the content of Defendants' interrogatory response.

406. Denied except as otherwise stated herein. Defendants further deny the finding of fact on the grounds that the document in question is a written document whose terms speak for themselves.

407. Denied except as otherwise stated herein. Defendants further deny the finding of fact on the grounds that the document in question is a written document whose terms speak for themselves.

408. Defendants deny the proposed finding except that, to the extent Plaintiffs have provided a direct quotation from deposition testimony, such quo-

tation is technically accurate, though removed from context.

409. Denied except as otherwise stated herein. Defendants deny the proposed finding as it is irrelevant, as the cited exhibits have no bearing on whether plan participant's minimum benefits were protected under Section 204(g) of ERISA. By way of further response, Part B always requires that minimum benefits be protected and the Plan Administrator and record keeper have procedures in place to ensure that the terms of the Plan are followed and that all participants receive the benefits to which they are entitled under the Plan and under ERISA. Although there was a mistake in Ms. Amara's initial benefit calculations, that mistake was corrected and Ms. Amara received all of the benefits to which she was entitled.

410. Denied except as otherwise stated herein. Defendants deny the proposed finding as it is irrelevant, as the cited exhibits have no bearing on whether plan participant's minimum benefits were protected under Section 204(g) of ERISA. By way of further response, Part B always requires that minimum benefits be protected and the Plan Administrator and record keeper have procedures in place to ensure that the terms of the Plan are followed and that all participants receive the benefits to which they are entitled under the Plan and under ERISA. Although there was a mistake in Ms. Amara's initial benefit calculations, that mistake was corrected and Ms. Amara received all of the benefits to which she was entitled.

411. Defendants deny the first sentence of the proposed finding on the ground that the document in question is a written document whose terms speak

for themselves. Defendants deny the remainder of the proposed finding insofar as it suggests the Plan Administrator has not provided sufficient information regarding present value to comply with the terms of the Plan.

412. Denied except as otherwise stated herein. Defendants object to the proposed finding because it is irrelevant. To the extent any class member believes that his or her benefit election form unlawfully omitted the present value of benefit options, that class member is legally required to exhaust such claim with the Plan Administrator. Unless and until such exhaustion is completed, this Court lacks subject matter jurisdiction over such claims. By way of further response, no Plaintiff claims to have received inadequate present value disclosures or to have been harmed by the absence of any such information.

413. Denied except as otherwise stated herein. Defendants object to the proposed finding because it is irrelevant. To the extent any class member believes that his or her benefit election form unlawfully omitted the present value of benefit options, that class member is legally required to exhaust such claim with the Plan Administrator. Unless and until such exhaustion is completed, this Court lacks subject matter jurisdiction over such claims. By way of further response, no Plaintiff claims to have received inadequate present value disclosures or to have been harmed by the absence of any such information. Notwithstanding the foregoing, Defendants admit that Plaintiffs have accurately cited deposition testimony, but take the testimony out of context. Defendants deny the finding of fact on the grounds that the SPD in question is a written document whose terms speak for themselves.

414. Denied except as otherwise stated herein. Defendants deny the proposed finding because it is based on inadmissible evidence. Specifically, Defendants continue to object to the admission of Mr. Stratman's report and trial testimony. The proposed finding is also irrelevant. To the extent any class member believes that his or her benefit election form unlawfully omitted the present value of benefit options, that class member is legally required to exhaust such claim with the Plan Administrator. Unless and until such exhaustion is completed, this Court lacks subject matter jurisdiction over such claims. By way of further response, no Plaintiff claims to have received inadequate present value disclosures or to have been harmed by the absence of any such information. Notwithstanding the foregoing, Defendants admit that the excerpt of Mr. Stratman's report Plaintiffs cite is accurately quoted, but is only a partial quote.

* * *

District Court Oral Argument Transcript (April 30, 2008)

* * *

[Page 82]

things, and there might be all sorts of individual calculation issues. I'm just not sure how many individual issues remain.

Let's focus on 204(h). How could there be an individual issue there?

MR. COSTELLO: Well, your Honor, *Frommert* teaches that the same likely prejudice, harmless error, regime governs the --

THE COURT: But I did that. In other words, I said that they were likely prejudiced, and you have not shown harmless error, and I didn't have actually any evidence of harmless error.

And it's not like you can say, oh, I know employee A knew that there was a significant reduction and therefore he wasn't entitled to a 204(h) notice, I don't know how you do that.

Actually, I thought, I seem to recall it is exactly in the reply brief, which is we had this conversation, or some of this conversation, shortly after I got the case and the decision was to take discovery, add some additional plaintiffs and try these issues at the broad level because, after all, if you were correct, if I decided that there was no prejudice, I assume you would have wanted to apply that ruling to all the members of the class, right? Because that was an issue that was tried.

MR. COSTELLO: But, your Honor, we entered into a **[Page 83]** stipulation on -- I guess it was

signed March 10th, 2006, that was the product of an ongoing negotiation between the plaintiffs and us, we had taken the position from the outset, and it's memorialized in a transcript in a conversation Mr. Blumenfeld had with the Court on June 20th, 2005, where our position was there needed to be discovery on these issues from all of the class members because they were individualized issues.

THE COURT: Right.

MR. COSTELLO: The parties decided in a sense to hopefully obviate the need for that, to go through the process we did, which is laid out in the stipulation of March 10th, 2006. The thought would be if you made class-wide rulings, for example, that the total compensation reports and the individual account statements were sufficient to defeat a likely prejudice finding, that could have class wide implications.

But that's not the only way that we can show harmless error, and only the three named plaintiffs and the absent class members who were present actually made an evidentiary presentation to your Honor on likely prejudice.

Your Honor pointed out in your decision that it very well, that the touchstone for the likely prejudice analysis is that people didn't have actual knowledge of the fact that the benefits were subject to a wearaway.

[Page 84]

THE COURT: Right.

MR. COSTELLO: Our point, and we make it in our brief, is there were obviously some people at CIGNA who knew the benefits were subject to a

wearaway. In fact, your Honor found that one of the reasons CIGNA was at fault here is that CIGNA knew that the benefits were subject to a wearaway and CIGNA could only know that through employees who know that.

Your Honor pointed to --

THE COURT: So if the appropriate remedy, just hypothetically, was that people get A plus B, those insiders who happened to have worked for CIGNA, who did the calculations and knew there was wearaway, they would be denied the benefits, you would be denying them to the officer group of yours, that would be CIGNA's ideas as at least with respect not to the rank-and-file, because they're not likely to but maybe if a secretary came across a memo and remembers reading it that some vice-president had written to some vice-president and presumably all the people who were involved in the planning of the program, they would be denied benefits because they knew that there was such a thing as wearaway.

MR. COSTELLO: That's one example.

THE COURT: I just want to be clear, that that is -- so the executive group that designed the plan and knew what its terms were and the would be wearaway, that executive group would be denied all benefits?

[Page 85]

MR. COSTELLO: Any individual that knew that the plan was subject to wearaway, whether it be an executive, whether it be people from CIGNA's pension business --

THE COURT: We could start, I think you should start, with your depositions with the executives who

designed this plan and start taking their depositions and inform them that the reason you are taking it is because you want to know if they were aware of wearaway because if they are, then whatever relief the Court orders, you are going to be denied that relief. You can start with the executives.

But the rank-and-file, people in offices other than maybe the central office, how in the world would they know that? You have to make a proffer or something.

I agree, if you guys want to and you talk to your client and they're all set with this, they want to carve out all the executives involved in the design of the plan and get them out of the class, maybe Mr. Bruce is happy to have that happen, but it seems odd that your clients would be urging you to do that.

MR. COSTELLO: Your Honor, it's one example of a group that has knowledge --

THE COURT: Of what?

MR. COSTELLO: Of the fact, of the information that you claim --

THE COURT: Wearaway. I agree with you, that your **[Page 86]** internal group of executives, senior executives who designed the plan and worked with Mercer, they may be excluded. So who else, as a category?

MR. COSTELLO: Well, there is a question about those individuals who learned of wearaway at a later point in time.

THE COURT: Who? Who? How?

MR. COSTELLO: Miss, Ms. Amara, she learned from a conversation with Mark Lynch in September of --

THE COURT: Okay. That's it. So if there are conversations at birthday parties at which someone said, you know, if you only knew how bad this was, you would be protesting, that that would mean that it was harmless error? Not official communications from the company, not official information from the company; at a birthday party, some other executive happens to mention something, that would be enough under the case law to say that it was harmless error? It just doesn't make any sense to me.

MR. COSTELLO: Your Honor, look at *Wilkins*, look at the *Wilkins* case. In *Wilkins*, the court said from other sources of information, you have the information that purportedly --

THE COURT: I think *Wilkins* was talking about somebody who was trying to apply for benefits and needed some specific things and whether they were able to get it in some other way.

[Page 87]

I find it very difficult to believe that if, during a casual conversation at a birthday party, somebody who doesn't speak for the company says, "you really ought to learn about this," and then she actually tries to learn about it and she gets nowhere with the company, that that person would be barred -- now, I agree with you, you know, your president of the company and those people who designed this plan, they maybe shouldn't be in the class, you should go back and tell them that, that you are going to move that they be withdrawn out of the class and be not enti-

tled to any benefits because they were the people who knew what this plan was doing.

And maybe Mr. Bruce won't have any objection to that, but I don't see how anybody else knew from the company, as opposed to rumor or anything else, the specific information that I say here, and if you would -- and I would like you, in your subsequent filing, to indicate whether the executive group which you are going to talk to would like to opt out of the class because they were in full possession of knowledge of wearaway, okay?

MR. COSTELLO: The individuals who were involved, who have been attributed with knowledge regarding the existence of wearaway, we will do that, your Honor.

THE COURT: Okay.

MR. COSTELLO: But it goes beyond that.

THE COURT: I don't see how you get beyond that. **[Page 88]** Just as -- how? I mean, other than simply interviewing all 226,000 people and saying, what? There was no information provided by the company so it would have to be: "I independently researched this, consulted with an expert and they told me."

MR. COSTELLO: Mr. Law did that, your Honor. Mr. Law testified that he did his own calculation of his benefit and learned what the difference was.

THE COURT: And then he was angry and --

MR. COSTELLO: Right. And, your Honor, it becomes a timing issue. One of the issues you need to address is at what point do you cut off the remedy?

THE COURT: I don't disagree with you on that, and you might say once this lawsuit was filed or people knew about the lawsuit or consulted -- there may be cut-off periods but I don't know that those are individual discovery issues. I mean, I think that we can deal with those at a macro level.

I don't know that, except that I agree with you, it may be that those executives who put this all together and knowingly didn't tell people about things, they may have excluded themselves from the class, and I assume you will report to me that they would like to be excluded from the class.

MR. COSTELLO: Can I give you two other examples?

THE COURT: And I will, I'll exclude them.

[Page 89]

MR. COSTELLO: Number one, there were, as Mr. Bruce and Mr. Moukawsher have indicated and as your Honor found, there are a large number of people who were not subject to wearaway whatsoever.

THE COURT: Okay.

MR. COSTELLO: Once again, the question for them is how are they likely prejudiced if they weren't subject to wearaway? Now, that may be a subclass issue. There might be a large number of people that we can identify as not being likely prejudiced, who --

THE COURT: But for them, if I were to grant this A plus B remedy, right? If I were, they're not going to get any more out of it. So why are we going through individual discovery to find out when in time they did or didn't know about wearaway or the fact of wearaway or not?

If we do A plus B and they're not going to get any more out of it, which is Mr. Moukawsher's problem with A plus B, why do we have to have individual discovery?

I don't mind, I agree with you that conceptually, there could be individual issues and there could be subclasses created or people, some groups, that got different remedies than other groups, and I am perfectly happy to listen to that but you haven't convinced me in terms of the defects that we're talking about, as to the 204(h) notice or the concept of wearaway, or the fact that early retirement benefits weren't **[Page 90]** included, that I should conclude that there are likely out there large groups of people who knew that really early on -- knew that for a fact, not surmised or not suspicion, knew that for a fact early on.

And if you go back to the whole notion of 204(h) that you get, it's to give the employees the leverage, and the leverage is to protest and convince the company to back off. Having one person who might know something about the plan but got it not from the company but from somebody else, when everybody else in the company is told that the benefits are comparable and they're not going to have significant reductions, it defeats the purpose of leverage. There is no leverage. There cannot be employee leverage in those circumstances. So I don't know why there would be individual issues.

MR. COSTELLO: Here's another individual issue: What if they never read the SPD or 204(h) notice to begin with? How are they likely prejudiced by something they never read?

THE COURT: Okay. Is there a case out there that says, in an inadequate SPD case, that if you can

show the employee never read the company's publication of the SPD, never read it in its entirety, and I bet you there's not a single employee who read it in its entirety, that they're barred from recovery?

[Page 91]

MR. COSTELLO: I can't cite a case sitting here now, standing here now, your Honor, but I can say this:

THE COURT: Why isn't that detrimental reliance? In other words, why wouldn't that be a thing of, listen, you never read it and if you never read it, you never relied on it and therefore didn't affect anything that you did one way or the other. And that sounds to me like detrimental reliance, and it would basically, particularly for these SPDs which are, you know, a lot of information, it would basically mean you could write the most bozo SPD that no one would agree would be adequate and you would always have a free pass because you never have to worry about it.

The janitors, the truck drivers, even the executives, you know, if you could show -- first of all, you would require the plaintiffs to have to go through discovery for all of them and if you could show -- that they never read the offending paragraph or never remembered reading it, after all we are now ten years later, the company would be home free. That seems inconsistent.

MR. COSTELLO: Your Honor, you are making it a strict liability statute.

THE COURT: Well, I'm not. What I'm saying is it's not strict liability. I had to decide that there would be likely prejudice. I did decide that. It was possible for you to demonstrate that there was harmless error, like for **[Page 92]** instance, you have an-

other notice in this period of time that solved the problem, and I found you didn't.

But beyond that, I don't think it's strict harmless error, but I also don't think it's detrimental reliance and if you are right, there's got to be a case out there. There's got to be a case that says it doesn't matter if it was a lousy SPD; the employee never read the darn thing anyway. Because I'm telling you, in most of these cases, employees won't have read the whole thing.

So that case that you are dreaming of has to be out there. It just has to be out there. And I think it's not out there, because the employer, the fiduciaries, the plan administrator, gotten off of those issues, really is required to have a statutorily compliant SPD, and if it's about a trivial matter that's not likely to have caused anybody any prejudice, then, you know, we are done with it.

Or if it's a prejudicial matter but there's some kind of showing that it was harmless because it was corrected promptly by something else, then fine.

But here, I didn't find that and I don't, I don't for the life of me, I don't understand what the individual issues would be, except the executive group who designed this and made the decisions not to tell people about this, they may be out of luck. I will entertain that argument.

Go ahead.

[Page 93]

MR. BLUMENFELD: Your Honor, two additional thoughts regarding this. The first is none of the cases that we've been talking about here have been in the class action context. *Burke* and *From-*

mert and *Wilkins* and *Weinreb* are all individual circumstances cases.

THE COURT: I agree with that. Is there any discussion in those cases about how they read it and they understood it and all that? Or is it just discussed in assuming that it's a communication of the employer, regardless whether they read it or not?

MR. COSTELLO: In *Weinreb*, it wasn't the requirement that he provide this affidavit wasn't in the SPD, but he was told about it by a company representative.

THE COURT: Again, all I'm saying is I could -- I'm not saying that I can't conceive of any individual issues. I could conceive of individual issues, but I think the way in which this case came up and in the context of my decision, I just don't know if there are any individual issues left to be.

And if the answer is yes, the individual issues is I want to take the deposition of all 26,000 plaintiffs to see if they read it, I need some case law to say that that's relevant at all.

MR. COSTELLO: Again, the starting point for this discussion was your Honor's Rule 23 order, where you identified likely prejudice and harmless error as individual **[Page 94]** issues.

THE COURT: As possibly -- I didn't even know what I was going to decide at that point, okay? And again, I could imagine that there could have been all sorts of individual issues before I ruled on the case. I now ruled on the case and again, I completely agree with you that these cases tend to not come up in the class action context. For better or for worse, Judge Squatrito certified this, we discussed how to proceed, I did proceed. I issued a ruling.

And now I think you have the burden of convincing me that there are actually, in the context of my actual ruling, individual issues that will make a difference that need to be examined. And I just don't see them. You guys can take a run at me but I just don't see what they are.

And I don't think that the fact that somebody may have been told at a birthday party by some mid-level executive that, geez, you won't believe what they're doing to your plan, that that would constitute -- somehow fix any defect that the company had.

MR. COSTELLO: What about testimony from an employee that, when she read her individual account statement or Total Compensation Report, she, in those circumstances, understood --

THE COURT: And I would have expected you to put that on, I honestly would have, I expected you to have some witnesses who testified that they knew full well, but we **[Page 95]** actually had a trial and I didn't hear that from anybody.

MR. COSTELLO: Your Honor, you identified them in your Rule 23 order as possible issues. We are guided by the Rule 23 order.

THE COURT: You can go up to the Second Circuit on that. I distinctly remember talking about these things, you guys were going to show me that people understood this, we were going to have all sorts of witnesses to show that.

I kept saying, I kept pounding you, if anybody was misreading me, I kept indicating very clearly on that, I thought the big problem with this case was the adequacy of the disclosure and ironically, your brief on disclosures didn't begin with the adequacy of the disclosures; it began with prejudice and harm

and that's because you knew that was an issue in this case. And --

MR. COSTELLO: You are right.

THE COURT: I think it was very telling that there was no effort made, or very little effort made, and certainly not a primary effort made, to show that those disclosures were adequate, because they just weren't. And the arguments were about prejudice and harmless error, and you made arguments about those, and I decided them.

You can make targeted requests for individual issues, but I just don't see them right now. I would need some case law to show that, you know, Ms. Amara finding out **[Page 96]** from some junior-level executive at a birthday party solves all deficient SPDs, because I think that gets back to detrimental reliance.

MR. COSTELLO: Will you entertain a submission from us?

THE COURT: Yes.

MR. MOUKAWSHER: Your March order does not say these are the issues I am going to decide; says these are the issues the parties list.

THE COURT: Everybody has identified the possibilities, and I agree they were possibilities, but I don't see the individual issues. There could have been; I just don't see them.

Assuming for the moment that the case was properly certified as a class action, and, you know, you still have that issue, you objected to Judge Squatrito, I assume you will go up on that issue and the Second Circuit may say I have to decertify this class and do something else, which is of course why

everybody has an enormous amount at risk here. But that hasn't seemed to focus people's attention up until now.

MR. COSTELLO: Thank you.

THE COURT: Mr. Bruce, you may end up with a case that has to proceed in an individual action and can't proceed with class action. The cigarette cases that just happened to do that and in part they did it because of the individual ***

* * *

FINAL

08-3388(L)
08-3460(XAP)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JANICE C. AMARA, GISELA R. BRODERICK, ANNETTE S. GLANZ, individually and on behalf of all others similarly situated,

Plaintiffs-Appellants / Cross-Appellees

v.

CIGNA CORPORATION and CIGNA PENSION PLAN,

Defendants-Appellees / Cross-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF OF DEFENDANTS-APPELEES / CROSS-APPELLANTS IN RESPONSE TO PLAINTIFFS-APPELLANTS' BRIEF AND IN SUPPORT OF THEIR CROSS-APPEAL

* * *

PRELIMINARY STATEMENT

Defendants-Appellees / Cross-Appellants CIGNA Corporation ("CIGNA") and the CIGNA Pension Plan ("the Plan") hereby appeal the following:

1. The Order of the United States District Court for the District of Connecticut ("District Court") (Honorable Dominic J. Squatrito), entered December 20, 2002, certifying the class in this matter, which is reported at 2002 WL 31993224 ("*Cigna I*").

2. The Order of the District Court (Honorable Dominic J. Squatrito), entered October 13, 2004, denying Defendants' motion to decertify the class, which is reported at 2004 WL 2381733 ("*Cigna II*").

3. The Memorandum of Decision of the District Court (Honorable Mark R. Kravitz), entered February 15, 2008, finding in favor of Plaintiffs on Counts Two, Four (to the extent Count Four addresses CIGNA's Section 204(h) notices), and Five (to the extent Count Five addresses failures of disclosure), which is reported at 534 F. Supp. 2d 288 ("*Cigna III*").

4. The Memorandum of Decision of the District Court (Honorable Mark R. Kravitz), entered June 13, 2008, granting declaratory, injunctive, and monetary relief to Plaintiffs, which is reported at 559 F. Supp. 2d 192 ("*Cigna IV*").

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The District Court had subject matter jurisdiction to hear this case under 28 U.S.C. § 1331, as it was brought under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq. This Court has appellate jurisdiction based on 28 U.S.C. § 1291, which provides that the courts of appeals shall have jurisdiction over all final decisions of the district courts.

STATEMENT OF THE ISSUES PRESENTED IN CROSS-APPEAL

1. The District Court found that CIGNA issued "inadequate" and "misleading" descriptions of the benefits provided under a cash balance pension plan governed by ERISA. Within a few months of these communications, however, Plan participants received personal pension statements that set forth the precise value of their account balance in the Plan, as well as how that amount was calculated. That information was updated annually. Under these circumstances, did the District Court err in concluding that all class members were likely harmed by the deficient descriptions, that Defendants failed to establish harmless error, and that class members should be awarded *more* than they were told they would be receiving under the Plan?

2. Did the District Court err in awarding Plan participants additional benefits where CIGNA's deficient disclosure did not cause any participant to be deprived of these additional benefits, and there was nothing that any participant could have done – even had the disclosures complied with ERISA – to obtain the additional benefits that were awarded?

3. In light of this Court's decisions in *Burke v. Kodak Ret. Income Plan*, 336 F.3d 103 (2d Cir. 2003), *Weinreb v. Hosp. For Joint Diseases Orthopaedic Inst.*, 404 F.3d 167 (2d Cir. 2005), and *Wilkins v. Mason Tenders Dist. Council Pension Fund*, 445 F.3d 572 (2d Cir. 2006), did the District Court err in ruling on a classwide basis that every class member was harmed by CIGNA's deficient disclosures without considering the individual circumstances of each class member, what that class member knew, and whether each class member likely would have made

different decisions had he/she received disclosures about the Plan that complied with ERISA?

4. In light of the Supreme Court's decision in *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995), can the terms of an ERISA plan be modified by a deficient summary plan description ("SPD") or summary of material modifications ("SMM")?

STATEMENT OF THE CASE

On December 19, 2001, Plaintiffs filed a two-count class action Complaint in the District Court. The Complaint was amended on June 12, 2002. Plaintiffs alleged that the Plan (a cash balance plan under ERISA) violated ERISA's nonforfeitability (Count 1) and age discrimination (Count 3) provisions, and that the SPD for the Plan violated ERISA's disclosure requirements (Count 2). On December 20, 2002, the Honorable Dominic J. Squatrito certified the class that Plaintiffs sought to represent.

On June 21, 2005, Plaintiffs filed another Amended Complaint which challenged disclosures under ERISA Section 204(h) (Count 4) and alleged that CIGNA violated ERISA Section 204(g)'s anti-cutback rule (Count 5).

On September 11-15, 2006, and January 24-25, 2007, the Honorable Mark R. Kravitz held a bench trial in this matter. On February 15, 2008, the District Court issued its Memorandum of Decision, finding in favor of Plaintiffs on Counts Two, Four (to the extent it addresses CIGNA's Section 204(h) notices), and Five (to the extent it addresses disclosures), and in favor of Defendants on Counts One, Three, and Five (to the extent it alleged substantive violations of ERISA). In summary, the District Court found that the Plan was entirely lawful, but that the descrip-

tions of Plan benefits in the Section 204(h) notice, SPD and SMM were deficient.

Following additional briefing on remedies issues, the District Court issued another Memorandum of Decision on June 13, 2008, granting classwide declaratory, injunctive, and monetary relief – the "A + B" remedy described in Plaintiffs' opening brief. The District Court issued a stay of execution of the remedy pending this Court's review of the parties' appeals. Both sides timely appealed the District Court's decision.

STATEMENT OF FACTS

The Second Circuit has twice explained the fundamental design of cash balance plans as follows:

> Under a cash balance pension plan, a hypothetical account is established in each participant's name. Benefits are credited to that "account" over time, driven by two variables: (1) the employer's hypothetical "contributions," and (2) hypothetical earnings expressed as interest credits. Employer "contributions" are usually expressed as a percentage of salary, the rate of which may vary with employee tenure. Interest credits may be at a fixed interest rate, but more often they are tied to an extrinsic index – for example, U.S. Government securities of a specified maturity – and they vary accordingly. ***Each year an employee receives a statement of her "account" balance, and can therefore see the value of her pension benefit.***

Hirt v. The Equitable Ret. Plan For Employees, Managers and Agents, 533 F.3d 102, 105 (2d Cir. 2008)

(emphasis added), quoting *Esden v. Bank of Boston*, 229 F.3d 154, 158 (2d Cir. 2000). CIGNA's cash balance plan falls squarely within this framework.

I. THE CIGNA PENSION PLAN

Before 1998, CIGNA had a traditional final average pay pension plan for its employees (referred to herein and in the transcript as "Part A"). (DA-191). In November 1997, CIGNA's chief executive officer signed a Plan amendment ("Amendment No. 4") freezing benefit accruals for certain participants. Amendment No. 4 provided in part:

> Notwithstanding any other provision of the Plan, no Employee who, as of December 31, 1997, is a New Formula Participant or has a combined total Years of Credited Service and age less than forty-five (45) shall accrue any additional benefits under the Plan after December 31, 1997.

(DA-191). As both sides' experts acknowledged, a result of the freeze, the rate of future benefit accrual for affected participants *was reduced to zero.* (Tr. 387-88; DA-191; E-321). Active participants whose benefits were not frozen pursuant to Amendment No.4, i.e., generally older, longer service employees, were grandfathered and continued to accrue benefits under the traditional plan. (DA-322).

On December 21, 1998, CIGNA amended the Plan again (what the District Court referred to as "Amendment No. 5") to adopt a cash balance formula, known as "Part B," for nongrandfathered participants. (E-622). Part B was adopted retroactive to January 1, 1998. *Id.*

A. Ongoing Cash Balance Formula

The ongoing benefits under Part B were credited each year to each participant's account, just as described in *Hirt* and *Esden*, *supra* at 5:

- Participants earned "benefit credits" in the form of hypothetical contributions added to their account balance based on a percentage of their salary. The benefit credits were age and service favored, i.e., older and longer service participants received a higher percentage of their pay than similarly situated younger or shorter serviced employees. The following table reflects the Plan's benefit credit rates:

Table A: Benefit Credit Rates

Combined Age And Service Points	Rate Applied to Pay Up to SS Integration Level	Rate Applied to Pay Over SS Integration Level
Under 35	3%	4.5%
35 - 44	4%	5.5%
45 - 54	5%	6.5%
55 - 64	6%	7.5%
65 or over	7%	8.5%

(DA-133). Thus, for example, an employee who is age 40 with 10 years of service (age plus service is 50) and earns $40,000 receives a benefit credit in 2003 of $2,000 (5% of $40,000).

- Participants earned interest on their account balance at the five year Treasury rate plus 0.25%, subject to a 4.5% minimum and a 9% maximum. (DA-334). The interest credit rate under Part

B is the same for all participants, regardless of age. Based on the Plan's interest rate formula, the actual annual historical interest rates for the Plan were:

Table B: Interest Credit Rates

Year	Plan Interest Credit Rates
1998	**6.05%**
1999	**4.79%**
2000	**6.22%**
2001	**5.95%**
2002	**4.50%**
2003	**4.50%**
2004	**4.50%**
2005	**4.50%**
2006	**4.70%**

(Tr. 276, Tr. 349; E-298; E-2268; E-2270).

Again, by way of example, a participant with an account balance of $50,000 as of January 1, 2000 would have $3,111 (.062 x $50,000) added to his account during 2000 in quarterly interest credits.

B. Opening Account Balances

In addition to the ongoing pay and interest credits added to participants' accounts on an ongoing basis, participants also received an Opening Account Balance ("OAB"). For new hires after December 31, 1997, the OAB was set to zero because they had no previously earned benefits to be "converted" into an OAB. For other employees, the OAB was based on

the participant's accrued benefit as of December 31, 1997:

- For most employees active on December 31, 1997, the OAB was set slightly *higher than* the actuarial equivalent value[1] of the participant's normal retirement (age 65) annuity benefit as of December 31, 1997, which constituted the participant's "accrued benefit" under Part A as defined in ERISA. (DA-120-21; E-299; Tr. 309-10, Tr. 980-83). The calculation for determining these OABs included a mortality assumption (because the accrued benefit under Part A generally was not payable if the participant died before benefits commenced) and used a lower, and hence more favorable interest rate for reducing the annuity to present value. *Id.*; (Tr. 482-84). The District Court held, and Plaintiffs' expert admitted, that the use of a mortality assumption was appropriate in calculating OABs. (SPA-45; Tr. 482-84)[2]

- For active employees who, on December 31, 1997, had 55 or more age and service points (generally, older, longer service employees who were not grandfathered), an even lower (and hence more fa-

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[1] Actuarial equivalent value is essentially a present value calculation that also factors in mortality factors, i.e., the likelihood of someone dying. (E-324-25).

[2] The OABs for those class members rehired between January 1, 1998 and December 31, 2000 were calculated in the same general fashion, except that a slightly higher interest rate was used. Part B was amended to provide that rehires after December 31, 2000 would not have their prior benefit converted into an OAB. Instead, those participants received a benefit under Part B for service after they were rehired, and a separate benefit under Part A based on their service before they were rehired. (Tr. 307-10; E-730).

vorable) interest rate was used to calculate OABs, and the OABs were based on the value of the participant's age 62 subsidized early retirement benefit, not the age 65 normal retirement benefit. (Tr. 220-21, Tr. 309-10, Tr. 982-83; E-299).

C. Operation Of Part B

Part B's pay credit and interest credit rates, as well as the formulas for creating OABs, were well within the mainstream of how benefits were earned in other cash balance plans. (Tr. 982-83, Tr. 991-93). In addition, Part B had a built-in death benefit, because the participant's entire account balance would be payable even if the participant died before retirement. (Tr. 482-84).

To ensure that participants never received less than the value of their accrued benefit under Part A (e.g., in the event interest rates fell after the participant's OAB was calculated), the Plan and SPD contained a "minimum benefit" provision. That provision, Part B, provided that a participant would always be entitled to receive upon retirement the greater of (1) their account balance or (2) the value of the participant's accrued benefit under Part A. (DA-112, DA-I22, DA-151; E-755).

Moreover, even Plaintiffs' expert admitted that the OABs for all participants were set equal to or higher than the value of participants' "accrued benefit" under Part A (as defined in ERISA) as of the date of, and using the interest rates in effect on, the conversion. (Tr. 309). Because Part A benefits were converted into a lump sum based on the interest rate in effect at the time of conversion, however, if interest rates were to fall after the participant's benefit was converted into an OAB, the present value of the participant's accrued benefit under Part A would in-

crease in value relative to the account balance. Conversely, if interest rates were to rise after the participant's benefit was converted, the present value of the participant's Part A accrued benefit would decrease in value relative to the account balance. (Tr. 1301-02). Plaintiff Gisela Broderick's cash balance account benefits, determined as of January 1, 2002, illustrates this point:

	Interest Rate	**Annuity to/from Lump Sum Rate**	**Cash Balance Account on 1/1/02**	**Lump Sum Present Value of Frozen Age 65 Annuity on 1/1/02**
1/1/01 Values	6.22%	6.15%	$141,620	$141,621
Actual Interest Rate	4.50%	5.12%	$165,995	$181,719
Mirror Image Rate	8.22%	7.18%	$166,822	$134,732

(E-2487). Because interest rates dropped from January 1, 2001 to January 1, 2002, the value of Ms. Broderick's Part A accrued benefit as of January 1, 2002 was higher than her account balance. However, had interest rates instead risen an equivalent (or "mirror") amount, the value of Ms. Broderick's account balance would have surpassed her Part A

accrued benefit by more than $30,000, rendering her cash balance more valuable. (Tr. 1116-17; E-2492).

In addition, Part A also offered preserved spouse and early retirement benefits that were not part of the "accrued benefit" (age 65 annuity benefit) under ERISA and consequently were not part of the OAB. Nevertheless, Part B protected each participant's entitlement to those benefits. Specifically, Part B provided that a participant could elect to receive the full value of his/her Part A annuity benefit (including preserved spouse and early retirement benefits) if that benefit exceeded the value of the participant's account balance. (Tr. 963-66, Tr. 988-89, Tr. 992, Tr. 1020, Tr. 1023, Tr. 1028-29; DA-112, DA-122, DA-266-67). Consistent with the terms of Part A, any such benefit would only be available in the form that benefits were available under Part A.

If the value of a participant's Part A benefits exceeded the value of the participant's account balance (described above), that participant experienced a "wearaway" situation. (Tr. 317-18, 1048-51; E-321-22). Wearaway is not a Plan term, but rather is reflection of the Plan's OAB and minimum benefit provisions. Whether a participant experiences a wearaway situation, and the degree of that wearaway, depends on the participant's eligibility for early retirement benefits and changes in interest rates. (Tr. 1024-28, Tr. 1083-85, Tr. 1089).

II. COMMUNICATIONS ABOUT PART B

CIGNA issued a series of communications about Part B, culminating in the publication of the Part B SPD in October 1998.

A. Signature Benefits Newsletter

In early November 1997, a special edition of "Signature Benefits Newsletter" was issued to all employees. The Newsletter described changes to CIGNA's Retirement Program, which included the "Pension Plan" (Part A), the "Retirement Plan" (Part B), and CIGNA's Savings and Investment Plus ("SIP"), the 401(k) defined contribution plan. (E-2192).

As the District Court found, the Newsletter unambiguously explained the benefit freeze set forth in Amendment No. 4:

> Employees participating in the new CIGNA Retirement Plan will stop earning benefits under the current Pension Plan on December 31, 1997.

(*Id.* at E-2196; SPA-22). The Newsletter also introduced the new cash balance plan design:

> The new CIGNA Retirement Plan is an *account balance plan*—a type of retirement plan that is becoming increasingly popular as a simpler alternative to traditional pension plans. Here's how the new plan will work:
>
> If you are transferring from the current Pension Plan to the new plan, an account will be set up for you in January.
>
> If you earned a benefit from the current Pension Plan, the lump sum value of that benefit as of December 31, 1997, will be transferred to your account as your opening balance.
>
> Beginning in January, your Retirement Plan account will grow through two types of credits:

- **Benefit credits.** CIGNA will make a benefit credit to your account for each year in which you work at least 1,000 hours for the company. These credits will range from 3% to 8.5% of your eligible annual earnings, depending on your age, service and earnings.

- **Interest Credits.** CIGNA will also credit your account with interest each quarter until you receive your benefit from the plan. The annual interest rate will vary from 4.5% to 9%, depending on recent yields of 5-year Treasury Bonds. This interest rate is consistent with guidelines set by the IRS for account balance retirement plans.

(E-2193) (emphasis in original).

The Newsletter also explained that the actual amount of each Plan participant's pension benefit would be calculated and disclosed at a later date:

> CIGNA will begin the process of calculating final pension benefits and Retirement Plan opening balances early in 1998, after all 1997 payroll data are finalized. Benefit calculations are expected to be completed in the spring. Once balances are calculated, they will be credited to Retirement Plan accounts retroactively to January 1, 1998, so you won't lose any interest credits for the first part of 1998. You will be informed of your final Pension Plan benefits and Retirement Plan opening balance in your *Total Compensation Report*, scheduled to be mailed in May 1998.

(*Id.* at E-2196) (emphasis in original).

B. <u>Retirement Program Information Kits</u>

In early December 1997, CIGNA sent each participant a Retirement Program Information Kit with additional information about Amendment No. 4 and Part B. The Retirement Kit again put Plan participants on notice that they "would earn no further benefits under the Pension Plan [Part A] after December 31, 1997." (E-788). The Retirement Kit also provided (1) details about how benefits were earned under Part B, (2) a chart with the benefit credit rates, and (3) examples of how Part B worked. (DA-385-86).

The Retirement Kits also explained that (1) for most employees, OABs would be based on the value of an employee's age 65 normal retirement benefit as of December 31, 1997, (2) CIGNA would be using an interest rate of approximately 6.5% for calculating the present values, and (3) for employees with a combination of age and service points of 55 or higher, OABs would include part (or all) of the value of their subsidized early retirement benefits and would be converted using a lower, and, hence, more favorable, interest rate. (*Id.* at DA-390).

C. Total Compensation Reports And Personal Account Statements

In May 1998, CIGNA provided each Part B participant with a personalized Total Compensation Report, which described precisely how that participant's OAB was calculated. For example, one of the testifying class members who had 55 or more points (and, hence, a more favorable OAB based on her age 62 benefit) received a Total Compensation Report that accurately described how her OAB was determined and even showed her the math for the calculation:

Your Highest Eligible Average Earnings	$143,478.96
Your Benefit Service Factor	x .01670
Years of Credited Service	x 7.00
Your Age 62 Benefit Before Offset	= $16,772.69
Your Social Security Offset (see note) plus Early Retirement Reduction	$3,859.89
Your Actual Age 62 Annual Benefit	= $12,912.80
Based on average life expectancy at your age and an interest rate of 5.05% the lump sum actuarial factor is	x 6.0813
Your lump sum benefit Opening Account Balance	$ 78,526.55

(E-439, E-452). Thus, the 1998 Total Compensation Report disclosed the specific benefit upon which the account balance was based (age 62, in the above example-age 65, for most younger employees), the interest rate used to calculate the present value OAB, and that the "average life expectancy," a layman's way of referring to mortality tables, was included in the calculation. (*Id.* at E-452).

On an annual basis, participants also received personal account statements, which set forth their account balance at the beginning and end of the year, the interest rate in effect during the year, and the pay and interest credits earned during the year. (E-

500, E-520, E-2227, E-2243, E-2259, E-2263, E-2295, E-2311, E-2319, E-2325, E-2328, E-2338, E-2352, E-2356, E-2360, E-2368, E-2376, E-2400, E-2403, E-2419, E-2425, E-2431, E-2439, E-2447, E-2459, E-2467, E-2475). Subsequent Total Compensation Reports also estimated the participant's monthly benefit based on their account balance and assumptions about future employment and interest rates. (E-466, E-2208, E-2209, E-2211.)

Plan participants also had available to them (1) Windows-based software tools to aid in their financial planning, (2) Internet-based tools for estimating their account balance or benefit during the year, and (3) telephone numbers to call with questions about their benefits. (E-446).

D. Part B SPDs

In October 1998, CIONA issued the SPD for Part B, a virtually identical version of which was reissued in September of 1999. (DA-324, DA-325).[3] The SPD described how Part B worked, and how pay and interest credits were calculated. The SPD explained generally that OABs were based on "old plan benefits," but did not contain the same detail that was in the Total Compensation Report or personal account statement sent to each participant. The SPD also described Part B's minimum benefit provision:

> Minimum Benefits
>
> If you participated in the Pension Plan before 1998, your **old plan** benefits were converted to an opening account balance in this Plan.

---

[3] Because the 1998 and 1999 SPDs are virtually identical, they are referenced together as "the SPD."

> Your final Plan benefits cannot be less than your **old plan** benefits on December 31, 1997. If this minimum benefit rule applies to you, you'll be notified by the Retirement Services Center when you request a distribution.

(DA-338 (emphasis in original); DA-355).

The SPD was included in the new hire benefits binder provided to all new employees and rehired employees, upon (re)hire. (E-829, E-1176, E-1494, E-1765). It also was added to the CIGNA Intranet cite. (E-2211, E-2227).

SUMMARY OF THE ARGUMENT

The District Court erred when it awarded Plaintiffs and the class more pension benefits than they were told they would be receiving under the Plan. The District Court held that certain ERISA-mandated disclosures issued by CIGNA specifically, a Section 204(h) notice, SPD and SMM-were deficient. Defendants do not challenge that conclusion here (although they do dispute whether a Section 204(h) notice was required for Part B). Within a few months of these communications, however, CIGNA provided Plan participants with personal pension statements that set forth the precise value of their account balance in the Plan, as well as how that amount was calculated. This information was updated annually. Class members testified at trial that upon reviewing this information, they understood that they would not be receiving as much as they had under Part A, and were able to use the information in making important financial decisions in their lives. Moreover, this is not a situation in which CIGNA's deficient disclosures caused Plan participants to be deprived of a benefit to which they were entitled, and which therefore could not have been

corrected by the personal pension statements issued by CIGNA.

Given these circumstances, and in light of this Court's decisions in *Burke*, *Weinreb* and *Wilkins*, the District Court plainly erred when it concluded that Plaintiffs and the class met their burden of providing that they were likely harmed by CIGNA's deficient disclosures and that Defendants failed to establish that these deficiencies constituted harmless error. As in *Weinreb*, Plan participants suffered no harm-likely or actual-because the vague and misleading references that troubled the District Court were corrected with accurate descriptions of the exact amount of each participant's opening account balance, the benefit and interest credits that had been added to the account, and how much the participant would actually receive upon retirement.

The District Court likewise erred when it concluded that Plaintiffs had proven likely harm and Defendants had failed to establish harmless error on a classwide basis. *Burke*, *Weinreb* and *Wilkins* leave no doubt that a court must examine each individual participant's specific circumstances in determining whether that participant was likely harmed by a deficient disclosure, and in analyzing whether the deficiency constituted harmless error. The District Court chose instead to make these determinations for a class of over 27,000 Plan participants on the basis of testimony of three named Plaintiffs and four other class members. It did so despite evidence that a number of class members fully understood what their benefits would be and therefore suffered no harm as a result of CIGNA's deficient disclosures. In making this classwide determination, the District Court also contradicted its own Fed. R. Civ. P.

23(c)(1)(8) order, in which it had identified the likely harm/harmless error analyses as individualized rather than classwide issues.

As to Plaintiff's appeal, in the event that this Court lets the District Court's liability decision stand, it should not increase the "A + B" remedy imposed by the District Court. Plaintiffs request that the Court require the Plan to payout even more benefits, specifically an award of Part A benefits, despite the District Court's holding that CIGNA's conversion to a cash balance plan and freezing of Part A were entirely lawful. The District Court specifically found that Part A was properly frozen as of December 31, 1997, that Plan participants were given proper notice of that freeze, and that Plaintiff never challenged the freeze amendment. Notably, Plaintiffs do not challenge any of these findings or holdings on appeal. There is no factual or legal basis, therefore, for awarding Plaintiffs additional benefits under Part A. Moreover, Plaintiffs' suggestion that the District Court should have granted them benefits beyond what the SPD and their individual pension statements informed them they would receive lacks any rational basis and is not grounded in any precedent. Finally, the District Court properly determined that terminated participants were not entitled to notice about the new cash balance plan until they were rehired. For all of these reasons, Plaintiffs' appeal should be rejected.

ARGUMENT

I. THE DISTRICT COURT ERRED WHEN IT AWARDED PLAINTIFFS AND THE CLASS MORE PENSION BENEFITS THAN THEY WERE TOLD THEY WOULD BE RECEIVING UNDER THE PLAN

A. Standard Of Review

The District Court's conclusions of law and its resolution of mixed questions of fact and law following the bench trial in this matter are reviewed de novo. *FDIC v. Providence Coli.*, 115 F.3d 136, 140 (2d Cir. 1997). Findings of fact are upheld unless they are clearly erroneous. *Id.* The District Court's legal conclusion that it could award classwide relief in this case is reviewed de novo. *In re Initial Pub. Offering Sec. Litig.*, 471 F.3d 24, 40-41 (2d Cir. 2006).

B. Plaintiffs Were Neither Likely Nor Actually Harmed By Deficiencies In CIGNA's Section 204(h) Notice, SPD And SMM Because CIGNA Distributed Personal Pension Statements To Plan Participants That Advised Them Of The Amount Of Their Pension Benefits

The District Court held that Plaintiffs met their "burden of showing" that they were likely harmed by the "inadequate" and "misleading" descriptions of their pension benefits in CIGNA's Section 204(h) notice, SPD and SMM, and that Defendants failed to establish that these deficiencies constituted harmless error. (SPA-104). The District Court reached this conclusion despite its finding that CIGNA provided all Plan participants with personal pension statements that accurately described exactly how much they would receive in pension benefits under Part B

if they were to retire. *Id.* Although the District Court acknowledged that CIGNA distributed these benefit statements in the spring of 1998 and annually thereafter, it nonetheless awarded Plaintiffs and the class *more benefits than they were told they could get under the Plan.* This was error.

In the Second Circuit, plan participants can recover for deficiencies in communications mandated by ERISA only when they demonstrate that the deficiencies likely caused them harm, and the defendant cannot establish harmless error. *Burke v. Kodak Ret. Income Plan*, 336 F.3d 103, 113 (2d Cir. 2003). Relying on *Burke*, this Court and district courts in the Second Circuit have denied relief to plan participants in a number of cases in which ERISA-mandated disclosures were found to be inadequate (or were not provided at all). In doing so, these courts concluded that plan participants suffered no harm (likely or actual) because, as in this case, they were provided with critical information regarding their benefits through other means.

For example, in *Weinreb v. Hasp. for Joint Diseases Orthopaedic Inst.*, 404 F.3d 167 (2d Cir. 2005), the widow of a plan participant sought to prevent enforcement of a plan requirement that a participant submit an enrollment form to receive life insurance benefits, because her husband was not notified of the requirement in an SPD – in fact, there was no SPD at all. *Id.* at 170. The participant, however, had been advised of the enrollment form requirement through other informal communications and telephone calls. *Id.* at 172. Accordingly, the Second Circuit held that the plaintiff "failed to raise any material issue of fact demonstrating likely prejudice from

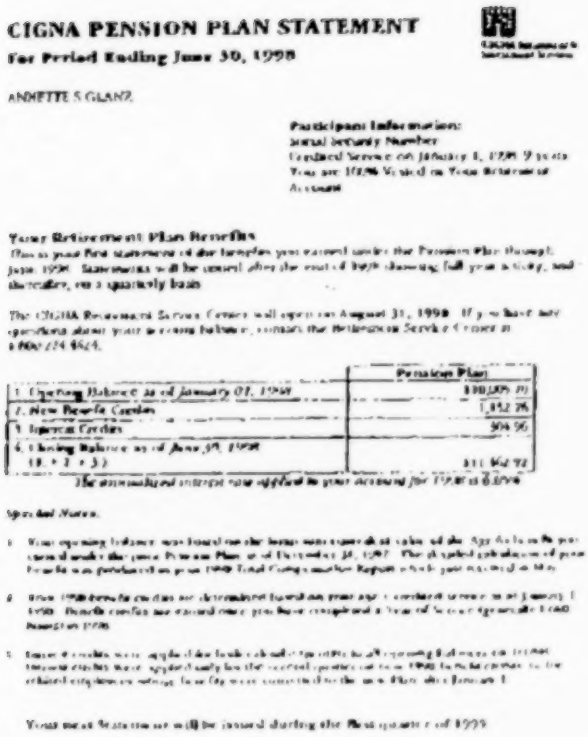
the absence of an SPD" and affirmed summary judgment against the plaintiff. *Id.*

Similarly, in *Pastore v. Witco Corp.*, 388 F. Supp. 2d 212 (S.D.N.Y. 2005), the court granted summary judgment in favor of the plan administrator despite finding that a severance plan SPD failed to disclose that plan participants were entitled to severance pay only if they resigned because the company was requiring them to relocate. *Id.* at 221. The plaintiff had been offered the choice of moving to another office or working part-time at home, and was therefore denied severance pay upon his resignation on the ground that he was not required to relocate. *Id.* In finding that this deficiency in the SPD constituted harmless error, the court noted that the plaintiff had learned of the "required to relocate" provision through another company communication distributed prior to his resignation. *Id. See also Park v. Trustees a/the 1199 SEIU Health Care Employees Pension Fund*, 418 F. Supp. 2d 343, 354 (S.D.N.Y. 2003) (holding that plan participant was not "likely prejudiced" by failure of SPD to include information regarding "lost spouse waiver" in pension plan because she ultimately became "sufficiently aware" of the waiver through other means to invoke it).

Here, the District Court held that CIGNA's deficient Section 204(h) notice, SPD and SMM "likely, and quite reasonably, led participants to believe that wear away was not a likely result of the transition to Part B, that the full value of the accrued benefits under Part A, including early retirement benefits, would be included in the opening account balances, and that the accrual rates for both short- and long-term employees under Part B were at least roughly equivalent to those under Part A." (SPA-104). In

other words, the District Court concluded that these deficient disclosures likely caused Plan participants to expect to receive more in pension benefits (the "A + B" benefit awarded by the District Court) than they were actually entitled to receive under the terms of the Plan.

The problem with the District Court's conclusion is that Plan participants were informed of what they *actually* were entitled to receive under the terms of the Plan in personal pension statements provided to them within a few months of CIGNA's deficient disclosures, and months before the Plan amendment creating Part B was adopted. Thus, as in *Weinreb*, Plan participants suffered no harm – likely or actual – because the vague and misleading references that troubled the District Court were corrected with precise descriptions of the exact amount of each participant's opening account balance, the benefit and interest credits that had been added to the account, and how much the participant would actually receive upon retirement.



CIGNA PENSION PLAN STATEMENT

For Period Ending June 30, 1998

ANNETTE S GLANZ

Participant Information:
Social Security Number
Credited Service on January 1, 1998 9 years
You are 10.0% Vested in Your Retirement Account

Your Retirement Plan Benefits

This is your first statement of the benefits you earned under the Pension Plan through June 1998. Statements will be issued after the end of 1998 showing full year activity, and thereafter, on a quarterly basis.

The CIGNA Retirement Service Center will open on August 31, 1998. If you have any questions about your account balance, contact the Retirement Service Center at 1-800-274-4624.

	Pension Plan
1. Opening Balance as of January 01, 1998	110,005.70
2. New Benefit Credits	1,152.76
3. Interest Credits	304.96
4. Closing Balance as of June 30, 1998 (1 + 2 + 3)	111,462.92

The annualized interest rate applied to your account for 1998 is 6.00%

Special Notes:

1. Your opening balance was based on the basis was expected at value of the Age Ad Benefit you earned under the prior Pension Plan as of December 31, 1997. The detailed calculation of your benefit was produced on your 1998 Total Compensation Report which you received in May.
2. Your 1998 benefit credits are determined based on your age + credited service as of January 1, 1998. Benefit credits are earned once you have completed a Year of Service (generally 1,000 hours) in 1998.
3. Interest credits were applied due back calculated to date in all opening balances on 1998. Interest credits were applied only for the second quarter of new 1998 benefit credits to the related employee's group. Benefits were converted to the new Plan after January 1.

Your next Statement will be issued during the first quarter of 1999.

(E-2336).

Participants also received updated personal account statements annually:

(E-2202).

The specific benefit information CIGNA provided was not an afterthought. CIGNA explained to Plan participants in the Newsletter and Retirement Kits provided to them in 1997 (the SMM) that the exact amount of their pension benefits would be set forth in the Total Compensation Reports and personal account statements provided to them in the spring of 1998. For example, the Newsletter stated:

> CIGNA will begin the process of calculating final pension benefits and Retirement Plan opening balances early in 1998, after all 1997 payroll data are finalized. Benefit calculations are expected to be completed in the spring. Once balances are calculated, they will be credited to Retirement Plan accounts retroactively to January 1, 1998, so you won't lose any interest credits for the first part of 1998. You will be informed of your final Pension Plan benefits and Retirement Plan opening balance in your *Total Compensation Report*, scheduled to be mailed in May 1998.

(E-2196) (emphasis in original).

The District Court acknowledged that the Total Compensation Reports and personal account statements were provided to all Plan participants, that they "included a substantial amount of useful information regarding Part B," and that they were "admittedly accurate." (SPA-82). Nonetheless, the District Court held that these statements "could not counteract the more favorable impression made by CIGNA's other statements about the positive features of the new plan and how employees' benefits could grow under Part B." *Id.*

This holding simply cannot be squared with this Court's decision in *Weinreb* and similar decisions in which courts have refused to award windfalls to plan participants based on a deficient disclosure when they have received accurate information from other sources. Moreover, it also is inconsistent with the testimony of Plaintiffs and certain class members who testified at trial. A number of these individuals admitted that upon receiving the Total Compensation Reports and personal account statements, they

understood that their benefits would be less than they expected or that they would not be receiving the "A + B" benefit that was ultimately awarded by the Court, and that they used the precise information provided by CIGNA in making important financial decisions in their lives:

- Robert Upton testified that he thought his OAB was "shockingly" low when he received his 1998 annual account statement. (Tr. 645, Tr. 649.)
- Bruce Charette testified that when he saw his 1998 annual account statement, he contacted the CIGNA benefit counselors because he thought his OAB was too low. The counselors explained how his OAB had been determined. (Tr. 856-57.)
- Gisela Broderick testified that based on her Part B annual account statement, she understood that she would not be entitled to the "A + B" formula. (Tr. 84-85, Tr. 140-41.)
- Annette Glanz testified that her financial adviser incorporated the cash balance account data from her Part B annual account statements into her family financial plan. (Tr. 190, Tr. 194.)
- Robert Upton testified that his financial adviser incorporated into his financial plan the cash balance account data set forth in the Total Compensation Reports and Part B annual account statements. (Tr. 688-91.)

- Barbara Hogan testified that she utilized all of the various sources of information provided to her concerning her Part B benefit in her retirement and financial planning, including the Part B OAB explanation, the annual account balance statements, and the Total Compensation Reports. For example, upon reviewing the amount of her OAB the June 1998 Total Compensation Report, Ms. Hogan increased her contributions to her CIGNA 401(k) savings account. (Tr. 726.)

This testimony is not surprising considering that a cash balance plan account statement, like those distributed by CIGNA, is a straightforward, easy-to-understand description of a participant's actual pension benefit. As this Court observed in *Hirt*, "[e]ach year an employee receives a statement of her 'account' balance, and can therefore see *the value of her pension benefit*." 533 F.2d at 105 (emphasis added). Indeed, numerous commentators have suggested that cash balance plans are easier to understand than traditional defined benefit plans "because the benefit is expressed in the form of an account balance." Allison C. McGrath, Note, *Pension Law: Cash Balance Pension Plans Are Not Inherently Age Discriminatory: Cooper v. IBM Personal Pension Plan Defies A Strong History of Support for the Cash Balance Plan*, 57 Okla. L. Rev. 429 (Summer, 2004); United States General Accounting Office, *Cash Balance Plans: Implications for Retirement Income* 19 (2000) ("Because benefits under cash balance plans are expressed as lump sum values rather than retirement age annuities, employees may better understand and value such plans.").

The availability of accurate personal account information for each Plan participant is what distinguishes this case from *Frommert v. Conkright*, 433 F.3d 254 (2d Cir. 2006), and its companion case, *Layaou v. Xerox Corp.*, 238 F.3d 205 (2d Cir. 2001), both of which the District Court relied on heavily in its decision below. The issue in those cases was whether a "phantom account" offset could be used by Xerox Corporation to reduce pension benefits when it was not disclosed in an SPD and was not even properly part of the plan. The Second Circuit held that the "phantom account" provision could not be applied until it was properly disclosed. As the district court noted in *Layaou*, however, Xerox's personal benefit statements, in contrast to the "admittedly accurate" statements issued by CIGNA, were misleading and confused Xerox plan participants:

> The confusion caused by the lack of notice as to how benefits would be calculated . . . was compounded by the individualized yearly calculation of estimated benefits Xerox sent to its employees. Layaou's 1994 yearly benefits statement informed him that Xerox calculated his . . . benefit to be $924 per month and his . . . lump sums of $18,403 and $9,244 respectively. This estimation of benefits, like the SPD, makes no mention of the "phantom account" offset. . . .

Layaou v. Xerox Corp., 330 F. Supp. 2d 297, 303-304 (WD.N.Y. 2004).

In contrast to the retirees in *Frommert* and *Layaou*, Plaintiffs and the class members in this case knew exactly what they would be receiving under Part B within a few months of CIGNA's deficient disclosures. Moreover, this is not a situation in which

CIGNA's deficient disclosures caused Plan participants to be deprived of a benefit to which they were entitled, and which therefore could not have been corrected by the personal pension statements CIGNA provided to Plan participants. *See, e.g., Wilkins v. Mason Tenders Dist. Council Pension Fund*, 445 F.3d 572, 585 (2d Cir. 2006) ("To show likely prejudice, he must proffer sufficient evidence that, had the SPD given him adequate notice of his burden of proof" of showing covered employment, he would have preserved records "adequate to prove his entitlement to additional benefits."). To the contrary, the District Court held that CIGNA's cash balance plan conversion, its decision not to provide an "A + B" benefit, and the wearaway experienced by Plaintiffs and certain Plan participants were all permissible under ERISA. (SPA-43-46, SPA-92.) Thus, no Plan participant has been denied a benefit to which he or she was lawfully entitled under the terms of the Plan. Where missing or misleading information in an ERISA-mandated disclosure would not have made a difference in the benefits a participant would have received, a claim of harm – likely or actual – rings hollow. *See Sheehan v. Metro. Life Ins. Co.*, 368 F. Supp. 2d 228, 262 (S.D.N.Y. 2005) (holding that plaintiff could not prove likely harm because, even if he had been apprised of terms missing from SPD, he could not "have acted in a way as to avoid the effect of the restrictions" in the plan).[4]

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[4] See also *Exarhakis v. Visiting Nurse Serv. of NY.*, No. 02-CV-5562 (ILG), 2006 WL 335420, at *13 (E.D.N.Y. Feb. 13, 2006) (holding that plaintiff could not demonstrate likely harm based on failure to provide SPD for long-term disability benefits because her testimony suggested that, even if she had been

In summary, Plaintiffs plainly were neither likely nor actually harmed by CIGNA's deficient disclosures. The personal pension statements provided to each Plan participant told them exactly what they would be receiving in pension benefits upon retirement. Given these circumstances, the District Court erred in holding that Plaintiffs were likely harmed, that Defendants failed to establish harmless error, and that class members should be awarded more than they were told they would get under the Plan.

C. Even If The Court Properly Concluded That Plaintiffs And Testifying Class Members Were Likely Or Actually Harmed By Deficient Disclosures, That Does Not Mean That Every Member Of The Class Similarly Was Harmed And Entitled To Recover

As explained above, CIGNA specifically and timely notified each Part B participant about (1) the value of his/her OAB, (2) how that OAB was calculated, (3) the formula by which pay and interest credits were earned each year, and most importantly, (4) the participant's account balance on an annual basis. Thus, at any point in time, each participant was told the value of his/her account balance, which is the

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[Footnote continued from previous page]

given an SPD, she would have returned to work as soon as possible rather than taking leave under the policy); *Tocker v. Philip Morris Cos.*, 470 F.3d 481, 489 (2d Cir. 2006) (noting that no likely prejudice would result to participant where SPD failed to explain plan administrator's discretionary authority to determine benefit eligibility, since that authority did not affect entitlement to benefits, but only the procedure once denial of benefits occurred).

fundamental benefit to which he/she was entitled under the Plan. Critically, no participant could ever receive less than their account balance upon retirement. Accordingly, these communications demonstrate that no Plaintiff or class member was likely or actually harmed by any deficiencies in CIGNA's Section 204(h) notice, SPD or SMM, because they were told precisely what their benefit was.

Even if some Plaintiffs or class members were likely or actually harmed by the disclosure deficiencies found by the District Court, however, it does not follow that the entire class was likely or actually harmed, as that inquiry is an individualized one. The District Court's conclusion that there was class-wide harm, made without considering each class member's own actual knowledge and factual circumstances, was error.

1. This Court's Burden-Shifting Paradigm In *Burke* Did Not Alter The Substantive Requirement That A Participant Be Actually Prejudiced Before A Remedy Will Attach For Deficient Communications

As an initial matter, this Court in *Burke*, 336 F.3d 103, did not alter the bedrock principle that there can be no remedy for a deficient disclosure if a participant is not harmed by it. Instead, the Court merely created a burden-shifting approach for evidentiary purposes after concluding that it would be unfair to place the burden of proof exclusively on a plan participant. *Id.* at 113. Thus, instead of a participant having to prove actual harm flowing from a faulty disclosure, a participant must only prove that he/she was "likely to have been harmed" by such a disclosure. *Id.* ("[W]e require, for a showing of

prejudice, that a plan participant or beneficiary was *likely* to have been harmed as a result of a deficient SPD.") *Id.* (emphasis in original). Upon a showing of likely harm, the defendant has the burden to demonstrate that the participant was not actually harmed by the disclosure deficiency, i.e., that the deficiency was "harmless error." By definition, this (or any) burden shifting only matters where the evidence weighs equally in favor of both parties. *Medina v. California*, 505 U.S. 437, 449 (1992) ("[T]he allocation of the burden of proof to the defendant will affect [judicial] determinations only in a narrow class of cases where the evidence is in equipoise; that is, where the evidence [in favor of the plaintiff] is just as strong as the evidence [in favor of the defendant].").[5] Regardless of where the burden of proof lies, however, a participant is not entitled to a remedy upon a finding that he/she was not actually harmed by a deficient disclosure. *See, e.g., Weinreb*, 404 F.3d at 172; *Wilkins*, 445 F.3d at 585.

2. The Likely Harm/Harmless Error Analysis Depends On Each Participant's Individualized Facts And Circumstances, Including That Participant's Knowledge And Understanding Of His/Her Benefits Under The Plan

To Defendants' knowledge, none of this Court's cases addressing whether an ERISA-mandated dis-

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[5] See *Cigaran v. Heston*, 159 F.3d 355, 357 (8th Cir. 1998) ("The shifting of an evidentiary burden of preponderance is of practical consequence only in the rare event of an evidentiary tie: If the evidence that the parties present balances out perfectly, the party bearing the burden loses.").

closure caused prejudice or likely harm were class actions. A review of the existing Second Circuit case-law interpreting and applying the *Burke* standard, however, demonstrates the individualized nature of the inquiry, and establishes that such determinations cannot be made on a classwide basis.

In *Burke*, for example, the SPD did not adequately notify the participant plaintiff's husband that he needed to file an affidavit of domestic partnership to receive certain benefits. The husband failed to submit the affidavit and, as a result, the plaintiff was not eligible for benefits that she otherwise could have received. In finding for the plaintiff, this Court relied on specific factual evidence that uniquely applied to the plaintiffs circumstances:

> Mr. Burke designated Mrs. Burke as the primary beneficiary of his Kodak-provided life insurance, his Savings and Investment Plan Account, and his Employee Stock Ownership Plan Account. Therefore, his forfeiture of substantial lifetime benefits for his disabled domestic partner, and later spouse, is belied by his prudence in other Kodak benefits decisions.

Burke, 336 F.3d at 114.

Likewise, in *Weinreb*, the plaintiff's husband failed to fill out an enrollment form for life insurance benefits, which caused the plaintiff to lose benefits to which she otherwise would have been entitled. This Court held that informal letters and telephone calls to the husband notifying him about the enrollment requirement defeated any claim of likely prejudice. *Weinreb*, 404 F.3d at 171.

This Court's decision in *Wilkins* provides perhaps the clearest example of the individualized nature of the likely harm/harmless error inquiry. In *Wilkins*, the Second Circuit explained that the prejudice analysis turns on "whether it is probable that the plaintiffs benefits would have been different had the SPD been adequate." 445 F.3d at 585. This Court explained:

> Answering the question of prejudice requires *further development of the factual record, and hence a remand to the district court. Wilkins admitted that the pay records he had retained were lost over the years or destroyed in a fire. To show likely prejudice, he must proffer sufficient evidence that, had the SPD given him adequate notice of his burden of proof, he would have taken effective measures either to safeguard these records against such perils, or to obtain and safeguard other competent evidence of covered employment. He must also show that the records or evidence that would have been preserved would be adequate to prove his entitlement to additional benefits*. . . . In other words, Wilkins must show, as a threshold matter, either (a) that he was in possession of his pay stubs until 1974 – if the fire and loss of records occurred in 1970, for instance, their destruction would not qualify as harm caused by the defective SPD – or (b) that in 1974, he would still have been able to obtain competent evidence of his prior covered employment that later became unavailable.

Id. (emphasis added).[6]

None of these cases suggests that the results would necessarily be the same for every plan participant who received the communications at issue. To the contrary, *Burke* suggests that if a plan participant had knowingly elected to forgo the domestic partner benefit because he did not want it (regardless of the affidavit requirement), that plan participant would not have been harmed by the deficient SPD and would not be entitled to recover. Likewise, although the plaintiff in *Weinreb* did not prevail on her claim, had her husband believed that enrollment was automatic, the Second Circuit's opinion suggests that she would have been able to recover. And in *Wilkins*, the Second Circuit remanded for further factual development as to whether, "*had the SPD given [the plaintiff] adequate notice . . . he would have taken effective measures*" to safeguard the information he needed to obtain benefits. Wilkins, 445 F.3d at 585.

Even the District Court's liability decision in this case acknowledged that a presumption of likely harm is rebutted where a court finds "actual knowledge on the plaintiffs part of the requirement omitted from the SPD." (SPA-103). Of course, whether any given

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[6] This Court's decision in *Frommert* is not to the contrary. *Frommert*, like *Burke*, *Weinreb*, and *Wilkins*, was not a class action. From the Second Circuit's opinion, it does not appear that there was a factual dispute about the harm suffered by the plaintiffs. Instead, the defendants made the legal argument that because the plaintiffs remained employed *after* learning about the phantom account in *Frommert*, they could not have been harmed by the failure to disclose the information previously. *Frommert*, 433 F.3d at 267.

class member has actual knowledge requires an individualized inquiry into that class member's circumstances. The District Court erroneously concluded that such an inquiry was unnecessary.

3. The District Court's Classwide Holding That There Was Likely Harm/No Harmless Error Was Erroneous

Despite the factual recitations in *Burke*, *Weinreb*, and *Wilkins*, and its own acknowledgment that a plaintiffs actual knowledge of the missing information rebuts any finding of likely harm, the District Court concluded that the entire class of about 27,000 Plan participants was likely harmed by CIGNA's deficient disclosures and that CIGNA would be unable to establish harmless error for any class member. The District Court based this conclusion on its determination that Plaintiff Janice Amara "*could have* negotiated for a higher salary, looked and talked to other employees, or stayed at her previous position" with a different employer had she known that the information that the District Court held should have been disclosed. (SPA-104-05) (internal quotations omitted, emphasis added). This was error for several reasons.

First, the District Court changed this Court's "likely" to have been harmed standard into a "could have" been harmed standard.[7] (*Id.*) This effectively

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[7] See also *Exarhakis*, 2006 WL 335420, at * 12 ("The emphasis on the word 'likely' indicates the heightened showing required in order to survive a summary judgment motion on a deficient-SPD claim; rather than simply identifying a factual dispute that possibly prejudiced plaintiff, e.g., that plaintiff might have filed for and received benefits had the SPD not been deficient, plaintiff must provide sufficient evidence on which an

transformed the likely harm test into a materiality standard that depends exclusively on the content of the ERISA-mandated disclosures, not on the impact any deficiencies in those disclosures had on particular Plan participants. Any class member "could have" been harmed by a deficient disclosure even when only a few (or none) were likely or actually harmed. If this were the standard, the careful analysis of the factual circumstances of the plaintiffs in *Burke*, *Weinreb* and *Wilkins* conducted by this Court and its discussion of the harm they suffered as a result of deficient disclosures would have been completely unnecessary.

Moreover, whether Ms. Amara, or any other Plaintiff or testifying class member, was likely harmed by CIGNA's deficient disclosures has no bearing on whether any other non-testifying class members were harmed (likely or actually). Indeed, there were undoubtedly some class members who never even read CIGNA's Section 204(h) notice, SPD and SMM. And several that did plainly understood what their benefits would be.

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inference could be based that she would have filed for the benefits but for the deficiency in the SPD."); *First Unum Life Ins. Co. v. Wulah*, Civ. No. 06-1749, 2007 U.S. Dist. LEXIS 82650, at *20 (S.D.N.Y. Nov. 8, 2007) ("Unlike *Weinreb*, *Exarhakis*, and most cases applying the likely prejudice standard, in which it was undisputed that a plan participant (or potential participant) lost out on benefits because of the plan administrator's failure to apprise him of certain features of the plan, [plaintiff] has not shown that he is materially worse off than he would have been had he received an SPD . . .").

For example, Robert Upton, a class member who worked in the CIGNA Law Department, testified that he requested and received a statement comparing his benefits under Part A and Part B. (Tr. 651-53, Tr. 660-63; DA-361). Thus, he fully understood that he was receiving less under Part B than he had under Part A. (Tr. 661-63). This was consistent with the testimony of other class members, described previously, who acknowledged that upon receiving the Total Compensation Reports and personal account statements distributed by CIGNA, they understood that their benefits would be less than they expected and were able to use this information in making important financial decisions in their lives.

Furthermore, the Court made reference to a number of employee complaints about Part B, some of which reflected clear knowledge that benefits under Part B could be less than they were under Part A. (SPA-84-85). Similarly, at the time of the cash balance plan conversion, CIGNA's business included pension plan consulting and administration, and some CIGNA employees participated in the design of other cash balance plans or of Part B itself. (E-369, E-535, E-543). These employees may have fully understood the implications of a cash balance plan, the potential for wearaway under Part B, the causes of such wearaway, and the relative benefit accruals provided under Part B compared to Part A. Indeed, the District Court found that CIGNA was "aware of the significant reduction in the rate of future benefit accrual" and "aware of the possibility of wearaway." (SPA-87). CIGNA could only have that awareness through its employees, many of whom are class members. These individuals should not be allowed to recover for deficient disclosures if they knew the information in question.

The District Court swept away all of this evidence on the grounds that to be relevant to the likely harm/harmless error inquiry, any "actual knowledge" possessed by a class member had to come in "official corporate statements" from CIGNA. (SP A-128). In doing so, the District Court imposed an additional requirement on Defendants that is inconsistent with this Court's refusal to provide plan participants with a remedy for a deficient disclosure if they were not actually harmed by the deficiencies. *See Weinreb*, 404 F.3d at 171 ("dispensing with any showing of prejudice . . . would afford unjustified windfalls to employees"). If a Plan participant acquired actual knowledge of how his/her benefit was calculated or correct information regarding the amount of that benefit, there could be no finding of harm regardless of the source of that information. *Id.* (informal letters and telephone calls notifying participant's husband about the enrollment requirement defeated any claim of likely prejudice).

Furthermore, the District Court also erred by ruling on a classwide basis that all releases executed by class members did not bar the claims advanced in this litigation. The District Court ruled for the entire class based on its review of one form of release used, which contained an exclusion for "any claims for benefits under any retirement, savings, or other employee benefit programs." (SPA-34). However, that was not the release used for all class members, and at least one later form of release contained a much more narrow exclusion that unambiguously barred the claims asserted in this case. *Id.* at 316.[8]

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[8] Even so, the claims upon which Plaintiffs prevailed were not claims for "benefits under" the Plan. Instead, they were

Instead of ruling on the applicability of the releases on a classwide basis, the District Court was required to examine the "totality of the circumstances" to decide whether that class member's claims are barred. *See Frommert v. Conkright*, 535 F.3d 111, 121-23 (2d Cir. 2008) (reversing district court and holding that releases signed by plaintiffs barred claims for ERISA disclosure violations seeking additional pension benefits); *Finz v. Schlesinger*, 957 F.2d 78, 82 (2d Cir. 1992) (identifying six individualized factors to be considered in determining whether release of ERISA closing was "knowing and voluntary").

The mere fact that this case is a class action cannot change the substantive standards, burdens of proof, or scope of relevant evidence. *C.f. In re Initial Public Offerings Sec. Litig.*, 471 F.3d 24, 43-44 (2d Cir. 2006) (applying unmodified substantive standards in determining whether individual questions of reliance would predominate over common questions for purposes of a class action). The evidence cited by this Court in *Burke*, *Weinreb*, and *Wilkins* in support of its decisions makes it clear that it was improper for the District Court to make a classwide determination of likely harm/no harmless error based on the evidence presented at trial. This is an individualized inquiry not appropriate for treatment on a classwide basis. *See McLaughlin v. Am. Tobacco Co.*, 522 F.3d 215, 223 (2d Cir. 2008) ("Individualized proof is needed to overcome the possibility that a member of

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claims alleging misrepresentations and violations of ERISA's disclosure obligations and seeking as a remedy additional benefits beyond those provided under the Plan, which were not excluded from the release.

the purported class" was misled by the misrepresentations).[9]

4. The District Court's Rule 23(c) Order Explicitly Stated That The District Court's Likely Harm/Harmless Error Inquiry Would Not Be Decided On A Classwide Basis

Prior to entering its decision on the merits, the District Court issued an Order governing the class claims, issues and defenses in this case under Federal Rule of Civil Procedure 23(c). In that Order, the District Court specifically stated that likely harm/harmless errors were individualized issues not to be decided on a classwide basis. (DA-89-92).

The purpose of Rule 23(c)(1)(B) is to identify which claims, issues, and defenses are being litigated on a classwide basis so the parties and the Court can "determine how the case will be tried." *Wachtel v. Guardian Life Ins. Co. of Am.*, 453 F.3d 179, 186 (3d Cir. 2006) (vacating class certification order based on inadequacy of Rule 23(c)(1)(B) statement of issues, which requires a "full and clear articulation of the litigation's contours . . . ."). Nevertheless, in its merits decision, the District Court disavowed its Rule 23(c) Order and ruled on the likely harm/harmless error analysis on a classwide basis, as explained above. This was error.

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[9] The Second Circuit in *McLaughlin* was addressing a RICO claim with a different articulation of the substantive "harm" element required for the misrepresentation claim than exists in this case. Nevertheless, the Court's holding in that case makes clear that the inquiry is still individualized.

D. Permitting A Deficient SPD Or SMM To Modify The Terms Of An ERISA Plan Runs Contrary To The Supreme Court's Decision In *Curtiss-Wright Corp. v. Schoonejongen* And ERISA's Two-Hats Doctrine

The District Court held that CIGNA's cash balance plan design and conversion satisfied all of ERISA's accrual, age discrimination, and vesting requirements. Plaintiffs do not challenge these holdings on appeal. Thus, Plan participants have received all of the benefits to which they are entitled under the terms of the actual Part B Plan document, and Plaintiffs do not claim otherwise in their appeal.

Nevertheless, the District Court ordered that the Plan be modified because of disclosure violations, a remedy estimated by the parties to cost the Plan between $70 million and $106 million. (DA-102). The District Court explained:

> Thus, until the Second Circuit rules otherwise, the Court believes that any remedial benefits it orders as a result of the materially misleading statements in CIGNA's notices and disclosures constitute benefits under the terms of the plan, and the CIGNA Plan is liable for those benefits under [ERISA] § 502(a)(1)(B).

(SPA-140). Despite that CIGNA's SPD did not erroneously promise participants that they would be provided "A + B" benefits, the District Court awarded a remedy beyond what the Plan promised, based on Second Circuit precedent that a participant's expectations from an SPD can effectively modify the terms of an ERISA plan.

Defendants acknowledge that in its decision in *Burke*, this Court held that "where the terms of a plan and the SPD conflict, the SPD controls." 336 F.3d at 110. The Burke decision therefore permits the terms of an ERISA plan to be modified by a subsequently published SPD with different terms.[10] Defendants respectfully submit, however, that the holding in *Burke* is inconsistent with ERISA's two-hat doctrine, as well as the Supreme Court's decision in *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995), and the statutory provisions of ERISA upon which the Supreme Court in *Curtiss-Wright* relied.[11]

In *Curtiss-Wright*, a company tried to modify the terms of its medical plan by publishing a new SPD describing the new plan terms. The Supreme Court held that publishing the SPD could effectively modify the terms of the plan only if the act of publishing the SPD satisfied the formal amendment procedures in

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[10] To Defendants' knowledge, this Court has never addressed whether a conflict between the terms of a plan and an SMM should be resolved in the same way.

[11] Defendants acknowledge that other Courts of Appeals have also held that an SPD can effectively modify the terms of an ERISA plan, although some require a showing of prejudice or detrimental reliance and others do not. To Defendants' knowledge, none of these Courts of Appeals – including the Second Circuit – has reconciled these decisions with the Supreme Court's decision in *Curtiss-Wright* or ERISA's two-hats doctrine. Under these circumstances, Defendants submit that this issue is appropriate for consideration by the panel, or alternatively, for consideration by the Second Circuit en banc. *See United States v. Ortiz*, 143 F.3d 728, 729 n.1, 730-31 (2d Cir. 1998) (overruling prior panel's decision where prior panel had not been presented with the relevant argument upon which the court was basing its decision).

the plan. *Id.* at 83-85. In reaching this conclusion, the Supreme Court noted that ERISA specifically requires that every plan have a "procedure for amending such plan, and for identifying the persons who have authority to amend the plan." ERISA Section 402(b)(3), 29 U.S.C. § 1102(b)(3). *See also Curtiss-Wright*, 514 U.S. at 78-80. Moreover, the Court explained that where a plan reserves to one particular corporate body the right to modify a plan, "one must look *only* to [that corporate body] and not to any other person" to determine whether the modification is valid. *Id.* at 79 (emphasis in original). As Plaintiffs acknowledge in their opening brief, "Plan amendments adopted in violation of the requirement in ERISA that amendments must be in writing and in conformity with the plan's procedures for amendments are likewise treated as invalid or ineffective." App. Br. at 24. There is no distinction made in *Curtiss-Wright*, or in ERISA's requirement that plans contain amendment procedures and follow those procedures, between amendments that benefit participants and those that are to participants' detriments. Nor is there any basis in trust or contract law for applying different standards for determining the validity of plan amendments, depending on who they benefit or harm.

Here, the Plan contains a detailed procedure for amending or modifying the terms of a Plan. (DA-292). Critically, the Plan Administrator – the person with exclusive statutory responsibility for publishing the SPD – is not one of the specifically enumerated parties with authority to amend the Plan. (*Id.*) Moreover, the mere publication of the SPD could not satisfy the Plan's formal procedures absent a resolution of the Board of Directors or the People's Resource Committee, or "a written instrument ap-

proved and executed by [a] duly authorized officer[]" of CIGNA. (*Id.*) Here, no such resolution of written instrument executed by a duly authorized officer exists that can be modified to provide the benefits ordered by the District Court. Under these circumstances, to permit the SPD to effectively modify the terms of Part B would run afoul of *Curtiss-Wright* and the formal amendment procedures in the Plan.

Furthermore, allowing the publication of an SPD to modify the terms of an ERISA plan runs afoul of ERISA's two-hats doctrine. ERISA's two-hats doctrine allows employers to function as both plan settlor and fiduciary, but requires that conduct regarding a plan be either fiduciary or settlor conduct, but not both. *Pegram v. Herdrich*, 530 U.S. 211, 225 (2000) ("ERISA does require, however, that the fiduciary with two hats wear only one at a time, and wear the fiduciary hat when making fiduciary decisions."). Modifying the terms of an ERISA plan is exclusively a settlor function. *Lockheed Corp. v. Spink*, 517 U.S. 882, 890 (1996) ("Plan sponsors who alter the terms of a plan do not fall into the category of fiduciaries."); *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 444-45 (1999) ("[A]n employer's decision to amend a pension plan concerns the composition or design of the plan itself and does not implicate the employer's fiduciary duties which consist of such actions as the administration of the plan's assets . . . . A settlor's powers include the ability to add a new benefit structure to an existing plan.").

By contrast, publishing an SPD is a fiduciary function within the exclusive statutory responsibility of the plan administrator. 29 U.S.C. § 1024; *Curtiss-Wright*, 514 U.S. at 83 ("One provision [of ERISA] requires that *plan administrators* periodically fur-

nish beneficiaries with a Summary Plan Description.") (emphasis added). Pension plans are funded through separate trusts with limited assets. To allow a plan administrator's written summary of a plan to obligate the plan to pay benefits that are not payable under the actual terms of the plan leaves fewer dollars available to pay benefits to those participants actually entitled to them under the express terms of the plan and threatens the actuarial soundness of such plans. *See c.f., Chambless v. Masters Mates & Pilots Pension Plan*, 772 F.2d 1032, 1041 (2d Cir. 1985) (recognizing the same concerns in the context of estoppel claims under ERISA); *Haeberle v. Bd. of Trustees of Buffalo Carpenters Health-Care Funds*, 624 F.2d 1132, 1139 (2d Cir. 1980) (same). Likewise, the District Court's remedy modifying the Plan to provide participants *more* than what was promised in either the Plan or the SPD runs the same risk. Such a result cannot be squared with ERISA or the Supreme Court's decision in *Curtiss-Wright*.

II. THE DISTRICT COURT PROPERLY DENIED PLAINTIFFS' REQUEST FOR ADDITIONAL ANNUAL BENEFIT ACCRUALS THAT WOULD EXCEED WHAT PLAN PARTICIPANTS WERE TOLD THEY WOULD BE RECEIVING UPON RETIREMENT

In their appeal, Plaintiffs claim that the $70-106 million in benefits they were awarded is not enough, and that they are somehow entitled to additional benefits beyond those awarded by the District Court. Plaintiffs are wrong for several reasons.

A. Standard Of Review

Plaintiffs do not challenge the findings of fact and conclusions of law underlying the District

Court's remedy decision. The District Court explained in its Remedies Opinion that the remedy it selected was based on weighing numerous factors and exercising its "equitable powers." (SPA-140). It also explained at length why it was denying Plaintiffs request for additional ongoing benefit accruals beyond the $70- $106 million already ordered. (*Id.* at SPA-142). As this Court recently stated, the Second Circuit "review[s] a district court's chosen remedy of an identified ERISA violation for an excess of allowable discretion." *Frommert v. Conkright*, 535 F.3d 111, 117 (2d Cir. 2008). The District Court's denial of the additional remedies requested by Plaintiffs was well within its allowable discretion, and therefore should be affirmed.

B. The District Court Correctly Held That An Award Of Benefits Under Part A Was Not Appropriate Where The District Court Found That The Freeze Was Properly Adopted And Disclosed, And Plaintiffs Never Even Challenged The Freeze Amendment

As an initial matter, Plaintiffs suggest that this Court should order the District Court to invalidate the cash balance plan that has been in effect (and disclosed) for the last ten years, and also invalidate Amendment No. 4, the amendment that froze ongoing benefit accruals under Part A for the class. In their place, Plaintiffs ask this Court to reinstate Part A, the more traditional defined benefit plan that was in effect before the freeze adopted by Amendment No. 4. In effect, they are attempting to use the District Court's ruling on the adequacy of CIGNA's disclosures to overturn the District Court's decision that CIGNA's cash balance plan conversion and design

complied with ERISA. In making this argument, Plaintiffs ignore the District Court's specific findings of fact and conclusions of law regarding Amendment No. 4 and its effect on their requested remedy, none of which they have challenged on appeal.

Amendment No. 4 ceased all future benefit accruals for affected participants as of December 31, 1997. That is, and as both experts admitted, no member of the class was earning any benefits under any plan after Amendment No. 4, and their rate of future benefit accrual was zero after the freeze. (Tr. 387-88; DA-199; D-321). The District Court found that this Amendment No. 4 was validly adopted and properly disclosed to the class. Specifically, the District Court found:

> Benefit accruals under Part A were frozen as of December 31, 1997 by virtue of the validly adopted Amendment No. 4, and CIGNA provided a valid 204(h) notice of that freeze in its November 1997 Signature Benefits Newsletter.
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> * * *
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> Furthermore, the Court notes that Plaintiffs have never challenged the validity of either the § 204(h) notice preceding Amendment No. 4, which put in place the freeze, or Amendment No. 4 itself. Indeed, the Court can find no fault with CIGNA's § 204(h) notice.
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> * * *
>
> Thus, the one thing that is absolutely clear from CIGNA's communications with its employees is that (with the exception of grandfathered employees) all CIGNA employees

> would stop receiving benefits under Part A as of December 31, 1997. Yet, what Plaintiffs desire as a remedy is for all CIGNA employees to continue to receive benefits under Part A after December 31, 1997.

(SPA-145). On these points, the District Court's findings are correct, and its holding and rationale are entirely sound. Amendment No. 4 – the freeze – was validly adopted and a proper Section 204(h) notice was provided.

Moreover, the District Court expressed concern that some employers might freeze benefit accruals before adopting a new plan in a "bad faith" effort to avoid their Section 204(h) notice obligations regarding the new plan. (SPA-150). However, the District Court explicitly found that CIGNA had not acted in bad faith, and had not adopted Amendment No. 4 to avoid its responsibilities under Section 204(h). (*Id.*). In fact, the District Court held that the adoption of Amendment No. 4 followed by the adoption of Part B was "more favorable to CIGNA's employees than other alternatives." (*Id.*).

Furthermore, the District Court explicitly found that Plaintiffs never "challenged the freeze on a substantive basis," nor have they "challenged the validity of . . . the § 204(h) notice" regarding the freeze. (SPA-145). Thus, they have waived any challenge to Amendment No. 4 in this Court. *Burnette v. Carothers*, 192 F.3d 52, 58 (2d Cir. 1999) (holding claims raised for the first time on appeal waived) (citing *Singleton v. Wulff*, 428 U.S. 106, 120 (1976) ("a federal appellate court does not consider an issue not passed upon below.")).

Plaintiffs' appeal does not challenge any of these findings or holdings. Under these circumstances, no

basis exists for invalidating the freeze amendment, and, consequently, there is no basis for awarding benefits based on the terms of Part A before the freeze.

As an alternative grounds for affirming the District Court's refusal to award Plaintiffs' benefits under Part A, Defendants challenge the District Court's conclusion that the amendment that created Part B required a Section 204(h) notice. Specifically, because the Part A freeze was properly adopted in November 1997, the subsequent adoption of Part B on December 21, 1998 and the associated resumption of benefit accruals under a cash balance formula was an *increase* – not a reduction - in the rate of future benefit accruals for affected participants. Both experts agreed on this point, i.e., going from zero to any number is an increase. (Tr. 387-88). Section 204(h) is clear: a notice only is required where there is a reduction in the rate of future benefit accruals. 29 U.S.C. § 1054(h). Thus, as a matter of law, no Section 204(h) notice regarding the adoption of Part B was required, and the District Court's conclusion that the adoption of Part B required a separate Section 204(h) notice is wrong as a matter of law. *See* 26 C.F.R. § 1.411 (d)-3(b) (providing that separate amendments are treated "as one plan amendment" only where the amendments have "the same adoption and effective dates."). This constitutes an alternative grounds for rejecting Plaintiffs' argument on appeal that they are entitled to an award of additional benefits based on the terms of Part A as it existed before the freeze.

C. The Benefits Plaintiffs Seek Would Provide Them With An Unprecedented Windfall Exceeding What Was Described In The SPD And In Their Personal Pension Statements

Plaintiffs also argue that they are entitled to benefits derived from an SMM that was published in December 1997, but that were not contained in the October 1998 SPD. The District Court explained:

> The only offending statements in the SMM that are not also found in the SPD (and cured by A+B) are the following: "CIGNA is not reducing the overall amount it contributes for retirement benefits, nor has the new program been designed to save money," (DA-370); "Other employees and all new hires will be able to earn comparable benefits as career employees under the CIGNA Retirement Plan [i.e., Part B]," *id.*; "Our analysis showed that, in comparison to people with a higher age and service combination, you have plenty of time to take full advantage of the many attractive features of the Retirement Plan . . .," *id.*; and "Generally speaking, the new Retirement Plan, in comparison with the current Pension Plan [i.e., Part A], tends to provide larger benefits for shorter-service employees and comparable benefits for longer-service employees," (DA-374).

(SPA-156). In their appellate brief, Plaintiffs focus on the word "comparable," and claim, based on this word, that the District Court, or this Court, should create from whole cloth some new cash balance plan with a new benefit formula that provides approxi-

mately ninety percent of the benefits that would have been provided under Part A. App. Br. at 46. This request has no foundation in ERISA. Moreover, these general statements (and Plaintiffs' requested remedy) cannot trump the specific, and accurate, benefit formulas described in the SMM and the SPD, and the personal account statements that told each class member precisely how much he/she earned each year.[12]

First, there is nothing in any of ERISA's remedial provisions that allows a court to act as a *plan sponsor* and create a new benefit formula from whole cloth. In that respect, this requested remedy is very different from the remedies authorized in *Burke* and *Frommert*, both of which struck out one specific plan provision that was not properly disclosed. By contrast, in this case, the District Court explained:

> In order to make these statements "true," as Plaintiffs request, the Court would be required entirely to rewrite the Plan's provisions, with no clear guidance from the Plan itself or the relevant notices and disclosures. Plaintiffs concede that the Court does not have such authority. The Court wholeheartedly agrees.

(SPA-156) (internal citation omitted).

Plaintiffs' requested remedy is also fundamentally inconsistent with the specific information provided to members of the class about their benefits.

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[12] The remedy Plaintiffs seek is also inconsistent with the terms of the Plan and is therefore inappropriate for the same reasons discussed in Section I.D.

"There is no doubt about the centrality of ERISA's object of protecting employees' justified expectations of receiving the benefits their employers promise them." *Frommert v. Conkright*, 433 F.3d 254, 262 (2d Cir. 2006) (quoting *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 743 (2004)). On the other hand, however, the "aim of ERISA is to make the plaintiffs whole, but not to give them a windfall." *Henry v. Champlain Enters., Inc.*, 445 F.3d 610, 624 (2d Cir. 2006) (citation and internal quotations omitted). Importantly, Plaintiffs have not alleged – and this Court has not found – any misrepresentations or disclosure deficiencies regarding the description of the ongoing benefit formula in the 1998 SPD. To the contrary, the SPD (which post-dates both the Retirement Kit/SMM and the Newsletter/ Section 204(h) notice) unambiguously describes how benefit credits are earned based on the class member's age, service, and salary, and how interest is earned on the account balance at a rate based on "5-year Treasury Bonds as of November of the previous calendar year, plus 0.25 percentage points." (DA-361). Thus, by the time of the publication of the SPD (if not before), class members were properly apprised of the ongoing benefit formula. As noted previously, class members also received annual personal account statements reflecting their account balances at the beginning and end of each year, and the amount of benefit credits and interest earned during the year. Consequently, each class member knew exactly how much he/she earned in additional benefits in each year, and how that number was calculated.

For example, Plaintiff Annette Glanz was explicitly told in her annual account statements that she earned a benefit of $3,095.98 in 1998, $3,495.14 in 1999, $4,994.94 in 2000, and $5,668.89 in 2001, and

how those benefits were calculated. (DA-2288). Yet despite these specific and unambiguous disclosures, Plaintiffs request that this Court adopt some new plan that provides Ms. Glanz benefit accruals in each of those years in excess of the specific dollars she was unambiguously told she would be receiving. In light of the 1998 SPD and annual account statements, it would not be appropriate or equitable – or in keeping with ERISA's disclosure requirements or enforcement provisions – to award class members more in benefits than they were told they were going to receive, or than they could reasonably have expected to receive, in any given year. *See Layaou v. Xerox Corp.*, 238 F.3d 205, 212 (2d Cir. 2001) ("ERISA empowers plan participants and beneficiaries to bring civil actions against plan fiduciaries for any damages that *result from* the failure to disclose . . . .") (internal quotations omitted; emphasis added). Plaintiffs' request that the District Court – or this Court – adopt a new plan design that provides the class participants more benefits than they were specifically told in the SPD and annual account statements they were receiving is unprecedented and should be denied.[13]

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[13] Moreover, the SMM was not provided to rehires, so they could not have been misled by any of the information in the SMM. (E-2198). Instead, upon rehire, these individuals received a copy of the SPD, which did not contain any of the statements about which Plaintiffs complain. (E-829, E-1176, E-1494, E-1765).

D. Rehires Were Not Entitled To Notice About The Cash Balance Plan Until They Were Actually Rehired, At Which Point They Were Provided With The SPD

Lastly, Plaintiffs argue that rehires should have received a Section 204(h) notice or SMM upon the adoption of Part B concerning the modified "rehire rule," and that they should be entitled to additional benefits based on the failure to provide those documents. Plaintiffs' argument is misguided.

When Part B was adopted, the rehires for whom Plaintiffs now seek to recover *were not rehires*. Instead, they were just former employees of CIGNA who had retired and commenced their benefits or who had some vested pension under Part A, but who had not started taking their pension. Thus, at the time that Plaintiffs allege a Section 204(h) notice or SMM should have been issued to these former employees, they were not earning any benefits at all. Rather, once these employees were separated from employment with CIGNA, their prior plan benefit was frozen, and their accrual was "zero," no matter how it is measured. Accordingly, no logical argument can be made that the rehire amendment reduced the "benefit accruals" of these employees.[14]

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[14] Importantly, if a plan administrator is not required to provide a Section 204(h) notice to a particular participant at the time of the amendment, there is no obligation to provide that participant a Section 204(h) notice at any later date. Section 204(h) notice obligations are triggered only based on the facts

Next, Section 204(h) requires that written notice be provided *only* to those participants who are likely to experience a significant reduction in benefits. At the time Part B was adopted (with related amendments defining who would be in Part B and who would not), however, Part B had *no impact* on any of these former CIGNA employees. The regulations in effect during the relevant time state that a participant who, at the time of the amendment, is not expected to have a significant reduction is not required to be provided the notice:

> Q-9: If section 204(h) notice is required with respect to an amendment, must such notice be provided to participants or alternate payees whose rate of future benefit accrual is not reduced by the amendment?
>
> A-9: (a) In general. A plan administrator need not provide section 204(h) notice to any participant whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment.

26 C.F.R. § 1411(d)-6T (emphasis added). The regulations also make clear that whether a particular participant is "reasonably expected" to have a significant reduction in future benefits is "determined based on all relevant facts and circumstances at the time the amendment is adopted." *Id.* The regulations further address the circumstances of former employees and provide that no Section 204(h) notice is required:

[Footnote continued from previous page]

and circumstances "at the time the amendment is adopted." 26 C.F.R. § 1411(d)-6T, Q-9.

> (c) Examples. The following examples illustrate the rules in this Q&A 9:
>
> Example 1. Plan A is amended to reduce significantly the rate of future benefit accrual of all current employees who are participants in the plan. *It is reasonable to expect based on the facts and circumstances that the amendment will not reduce the rate of future benefit accrual of former employees who are currently receiving benefits or that of former employees who are entitled to vested benefits. Accordingly, the plan administrator is not required to provide section 204(h) notice to such former employees.*

26 C.F.R. § 1411(d)-6T (emphasis added). In accordance with *Frommert*, 433 F.3d at 263, 269 n.12, the District Court properly determined that separated, vested employees were not entitled to a Section 204(h) notice (or SMM) prior to their rehire. (SPA-107-09).

It is true that some small percentage of these separated, vested individuals was thereafter rehired by CIGNA. Upon their rehire, these employees were placed into Part B, in accordance with the terms of Part B. (DA-127). Employees who had previously retired and were receiving benefits did not have an OAB, but kept their separate Part A benefits; other rehires had OABs calculated based on their previously earned accrued benefit.[15] *Id.* Importantly, CIGNA provided these rehires (and all new hires)

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15 Even after their benefits were converted into an OAB, these rehires still had the right to commence the full amount of the benefits they earned under Part A. (Tr. 307-10; E-730).

with a Signature Benefits Binder that included the Part B SPD upon commencement of their employment. (SPA-29-30; E-829, E-1176, E-1494, E-1765). Thus, as soon as they started participating in Part B, these rehires were provided with the Part B SPD describing the precise formula by which pay and interest credits were earned each year. These rehires also received the same account statements telling them precisely how much their account balance increased from year to year. Nothing more was required by ERISA.[16] *See* 26 C.F.R. § 1.411 (d)-6T (notice of a plan amendment must be provided only to participants likely to experience a significant reduction in benefits). Plaintiffs' argument that CIGNA was required to notify all CIGNA retirees, and all other former CIGNA employees, about Part B before it had any chance of affecting them is wrong, and the District Court properly rejected it. (SPA-107-09).

CONCLUSION

For the reasons set forth above, this Court should reverse the conclusion of the District Court that Plaintiffs and all class members were likely harmed by CIGNA's deficient disclosures, and that Defendants failed to establish that these deficiencies constitute harmless error.

In the event the Court upholds the District Court's ruling in favor of Plaintiffs, it should nevertheless reject Plaintiffs' assertion that class members must be provided with pension benefits comparable

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[16] In fact, it could have, and likely would have, led to confusion among CIGNA's retirees and other former employees if they were provided with notice about the new cash balance plan being adopted at CIGNA before the time of their rehire.

to what they would have received under Part A, an extraordinary windfall that would provide participants with more than they were told they would get under the Plan in the SPD and personal pension statements distributed by CIGNA. Finally, the Court should affirm the District Court's ruling that no notice of Part B was due to separated, vested employees.

* * *

Supreme Court, U.S.
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No. 09-804

IN THE
Supreme Court of the United States

CIGNA CORPORATION AND CIGNA PENSION PLAN,
Petitioners,

v.

JANICE C. AMARA ET AL., individually and on behalf of all others similarly situated,
Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

JOINT APPENDIX
Volume 2 of 3
(Pages 377a-748a)

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32912

TABLE OF CONTENTS

Page

Docket Entries from the United States Court of Appeals for the Second Circuit, No. 08-3388-cv 1a

Docket Entries from the United States District Court for the District of Connecticut, No. 3:01-cv-02361-MRK 14a

Memorandum of Decision Granting Motion To Certify Putative Class (Dec. 20, 2002) 96a

Third Amended Class Action Complaint for Declaratory and Injunctive Relief Under ERISA (Feb. 17, 2006) 105a

Answer and Affirmative Defenses of Defendants CIGNA Corporation and CIGNA Pension Plan to Third Amended Class Action Complaint (Mar. 6, 2006) 123a

Stipulation and Joint Motion on Conduct of Discovery and Trial on "Likely Prejudice" and "Harmless Error" Issues Connected with Second and Fourth Claims for Relief (Mar. 10, 2006) 138a

Trial Transcript Excerpts

Testimony of Janice C. Amara (Sept. 11, 2006) 147a

Testimony of Gisela Broderick (Sept. 11, 2006) 159a

Testimony of Annette Glanz (Sept. 11, 2006) 182a

Testimony of Claude Poulin (Sept. 11, 2006) 189a

Testimony of James Stratman (Sept. 13, 2006) 196a

Testimony of Robert John Upton (Sept. 14, 2006) 201a

Testimony of Barbara Hogan (Sept. 14, 2006) 212a

Testimony of Bruce A. Charette (Sept. 14, 2006) 227a

Testimony of Patricia Flannery (Sept. 15, 2006) 240a

Testimony of Lawrence Sher (Sept. 15, 2006) 255a

Testimony of Claude Poulin (Jan. 25, 2007) 264a

Order Under Rule 23(c)(1)(B) (Mar. 12, 2007) 270a

Defendant's Responses and Objections to Plaintiffs' Proposed Post-Trial Findings of Fact (June 25, 2007) 283a

District Court Oral Argument Transcript (April 30, 2008) 302a

Brief of Defendants-Appellees / Cross-Appellants in Response to Plaintiffs-Appellants' Brief and in Support of Their Cross-Appeal (Jan. 13, 2009) 316a

Court of Appeals Oral Argument Transcript (May 21, 2009) 377a

Trial Exhibits

Exhibit 1 ..... 396a
Exhibit 2 ..... 539a
Exhibit 47 ..... 749a
Exhibit 48 ..... 752a
Exhibit 58 ..... 755a
Exhibit 115 ..... 771a
Exhibit 117 ..... 811a
Exhibit 119 ..... 834a
Exhibit 120 ..... 835a
Exhibit 121 ..... 837a
Exhibit 124 ..... 838a
Exhibit 128 ..... 844a
Exhibit 129 ..... 856a
Exhibit 130 ..... 874a
Exhibit 131 ..... 890a
Exhibit 133 ..... 893a
Exhibit 140 ..... 897a
Exhibit 505 ..... 902a
Exhibit 506 ..... 923a
Exhibit 508 ..... 939a
Exhibit 516 ..... 990a
Exhibit 598 ..... 996a

The following opinions and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the petition for a writ of certiorari:

Opinion of the United States Court of Appeals for the Second Circuit 1a

Opinion of the United States District Court for the District of Connecticut (Feb. 15, 2008) 5a

Opinion of the United States District Court for the District of Connecticut (June 13, 2008) 160a

Court of Appeals Oral Argument Transcript (May 21, 2009)

* * *

THE COURT: Okay, thank you. Unless there are other questions, thank you both. I'll reserve decision. At this time, we'll hear Amara v. CIGNA.

MR. BRUCE: I'm Stephen Bruce for the Appellants and Tom Moukawsher is with me and he'll be handling the rebuttal. We wanted to reserve four minutes for rebuttal.

This case ultimately is about the retirement benefits of a class of over 27,000 current and former CIGNA employees. We had a seven-day bench trial which was the first bench trial that's occurred on any of the so-called cash balance conversions, which, as time has shown, were a mask for steep benefit reductions for employees' future retirement benefits.

After that bench trial, we received a ruling on liability that was very strong on all of the disclosure claims except for one, which I'm going to talk about. But it was very strong on all of the disclosure claims. And then, ultimately, in the remedies decision, the District Court pulled back and did not award any relief for the Section 204(H) violation and did not award any relief for the violation of the summaries and material --

THE COURT: I mean, the issue, I guess, is whether the relief that was given fully compensated, or as your adversary would argue, over-compensated for the harm and the prejudice that your client suffered. Now, could you tell me what harm and prejudice your client suffered as a result of the improper

disclosures, insufficient disclosures that were found in the District Court?

MR. BRUCE: Our clients were under a traditional defined benefit formula and the statute, Section 204(H) required that when that formula was changed to sharply reduce benefits --

THE COURT: Yes.

MR. BRUCE: -- that they should have been notified of that change.

THE COURT: Yes, I understand that, and they weren't. I just said that.

MR. BRUCE: Right.

THE COURT: Now, how were your clients harmed or prejudiced as a result of that? And that would help us know what the proper remedy should be.

MR. BRUCE: As the District Court said, the statutory scheme is set up to provide the employees with leverage, that by disclosing the reductions, the employees can then protest about it, they can try and get the employer to make changes to those reductions before they actually go into effect. And then if failing that, that they can take other steps to protect themselves.

THE COURT: Like what?

MR. BRUCE: Like considering other employment. They can demand other types of compensation. If the retirement plan couldn't be fixed, they could demand other types of compensation to make up for it. They can make alternative retirement plans.

THE COURT: So, basically, you're saying that the injury and damage to each of these 27,000 people should simply be assumed?

MR. BRUCE: Well, the statutory scheme of Section 204(H) is that if the employer is not willing to provide the honest disclosure of the reductions, that you reinstate the prior benefit formula. And that statutory scheme has been reaffirmed in changes that Congress made to the law in 2001. That is the statutory scheme. It is designed to -- as the District Court has ably said, it's designed to provide the employees with a little bit of leverage so that they can say that if the employer needs to be honest about the reductions, when the honest disclosures of the reductions are made, employees will protest that, and it doesn't take all 27,000 people protesting that before CIGNA would have considered a change. We found a deliberate pattern here that CIGNA avoided those disclosures exactly because they wanted to avoid the employee reaction, even after the disclosure.

THE COURT: It was found that if the notice had -- notice issues aside, that CIGNA was privileged to make this change.

MR. BRUCE: They're not privileged to make the change without disclosure of the reduction.

THE COURT: I just said, notice issues aside, they were privileged to make the change.

MR. BRUCE: Your Honor --

THE COURT: (Inaudible).

MR. BRUCE: In terms of what are called the ERISA minimum standards, that's what the Court found, yes. But CIGNA not only did not disclose the reductions, they -- as the District Court found, they

affirmatively misled the employees, suggesting that these were actually benefit increases. This wasn't just a case of silence. This was a case of misleading employees and we found direct evidence that there were instructions that when -- that obviously even when you tell employees that benefits are being increased, some employees will be suspicious. We found direct instructions not to provide people with any comparative information. When people asked for comparisons about how this compared with the old formula, they were stonewalled.

The one employee that we found who obtained some comparative information was an attorney for CIGNA. He was threatened with a job action. He was threatened with adverse job action unless he stopped complaining. So, there was clear harm to the class, and that's what the Court found under Frommer (phonetic), was the likely prejudice that --

THE COURT: When you say there was clear harm to the class, you mean that the new plan, Plan B, that the new plan was disadvantageous to people. On the other hand, you would concede that, notice issues aside, CIGNA had the right and power to make that change.

MR. BRUCE: CIGNA had -- yes, CIGNA has actually last week --

THE COURT: They could do away with their (inaudible).

MR. BRUCE: Last week -- last week they, in fact, froze the entire cash balance plan, effective July of 2009.

THE COURT: Well, that's not in the record, is it?

MR. BRUCE: No, but that is --

THE COURT: (Inaudible) the record.

MR. BRUCE: That is the fact. So, we're not contesting that an employer has the ability to do these things, but the employer's required to disclose and the employer cannot mislead the employees and stonewall them from finding out about the reductions, particularly when you have a different form of benefits where the reductions are massed.

THE COURT: So, the harm and injury to your client was that they were deprived of an opportunity to protest and to complain that the company was privileged to do, if it had given proper notice?

MR. BRUCE: And they were deprived of the opportunity to take alternative action. Many of our clients -- there's a number of our clients who were not CIGNA -- some of them are CIGNA employees who were considering coming back to CIGNA. They were not told that they were being moved in to a cash balance formula.

THE COURT: They would seem to be a separate class, wouldn't they?

MR. BRUCE: No, they were within this class. There's separate claims. There's separate claims.

THE COURT: (Inaudible) 27,000 people who are situated in approximately 2,500 different ways. It's a very strange class. But, I mean, wouldn't you agree that the people who were coming back were -- had the opportunity when they returned to find out what their pension arrangements would be the same way they would find out what their salary arrangements would be, how many days they would work and what their hours would be?

MR. BRUCE: Well, Your Honor, it's a matter of timing. It's like striking when the iron is hot. When there's a job offer from the employer is the time when you have the most leverage. Once you've come back to work, your leverage --

THE COURT: Could you tell me what the harm and damage is to people outside that loop? Let's not call it a class, outside the group of new hires, aside from the inability to protest and express dissatisfaction and unhappiness with something that the company was privileged to do.

MR. BRUCE: They were deprived of the opportunity to change their retirement plans, to make alternative -- to make other demands of their employer for compensation to make up for the deficiency. For example, if an employee -- if one employee under the old plan had $1,500 a month in retirement income; under the cash balance plan, after working for six more years, he had $2,200 a month. Under the old formula, he would have had $3,700 a month. If he had known about the difference in his retirement income, he could not only have complained about it, but he could have joined with others in protesting about that. He could have asked for other types of compensation to make up for that. He could have changed his plans for 401K plans. It might affect what his spouse does in --

THE COURT: But doesn't that suggest that when you're looking at a class remedies -- this is a very ill-conceived class to begin with because it looks like the injury and damage to each person would be very particular to the individual circumstances of that person.

MR. BRUCE: Well, Section 204(H) provides for the remedy of putting people back under the prior

formula. In our alternative request for relief, under -- for the violation of the summaries and material modification requirement was that CIGNA be held to its promise that employees would receive at least comparable benefits under this cash balance arrangement.

THE COURT: Okay. I'm afraid I'm monopolizing the questions. We'll hear you on rebuttal. Thank you.

MR. BLUMENFELD: Good afternoon, Your Honor, Jeremy Blumenfeld on behalf of CIGNA and the CIGNA pension plan. May it please the Court, you asked the right question, I think, very much, Your Honor.

THE COURT: Well, I'm going to ask you different ones.

MR. BLUMENFELD: Of course. What is the harm, what is the prejudice that's alleged here? And the thing that I would like to focus on, Your Honor, is that from the start, participants were provided with individualized communications about what precisely their benefits were going to be, and this started not after the cash balance (inaudible) conceded that the notice here failed.

The underlying disclosures, the specific disclosures that are being challenged are summary material modifications --

THE COURT: Failed, right. Totally inadequate. Totally inadequate.

MR. BLUMENFELD: Were inadequate, yes, Your Honor.

THE COURT: Yeah, okay. So, what were you about to say about them providing notice?

MR. BLUMENFELD: No. There were separate communications that went out to each plan participant individually, starting six months before the cash balance plan actually was adopted, and that communication, the first one told participants exactly what their opening account balance was in the cash balance plan and exactly how their personal opening account balance was calculated.

THE COURT: Yeah, but hold on a second.

MR. BLUMENFELD: Sure.

THE COURT: That is telling them what there would be in the hypothetical account of the cash balance plan, but it doesn't tell them how that situation would have compared with the earlier scheme.

MR. BLUMENFELD: It does not provide a direct comparison with what they would have earned --

THE COURT: That's the failure of notice.

MR. BLUMENFELD: Well, actually, Your Honor, 204(H) that was in effect at the time of this statute didn't require a comparison of the benefits you would have earned under the old formula versus the benefits you would have earned under the new formula.

THE COURT: But your client went ahead and told people, you know, your lives will be better off if you're a new hire or a young person or you'll have a comparable situation if you're older.

MR. BLUMENFELD: It did say generally the benefits would be comparable, but --

THE COURT: And they're finding that that's not so.

MR. BLUMENFELD: That's correct, Your Honor. But the more specific communication that went out to individual participants told them actually what their precise benefit was. No plan participant could have looked at this communication or the communications that came out every year thereafter and not understand what their personal benefit was.

MR. BRUCE: The year after is irrelevant.

THE COURT: If I told you that when you turn whatever, you'll be entitled to $478.52 in pension every month, that wouldn't be very -- that wouldn't tell you anything. If you were entitled to $800, you would want to know that.

MR. BLUMENFELD: And the allegation here, though, Your Honor, is not that participants were entitled to more than they actually were being told they were going to get or that CIGNA didn't pay plan participants what they were actually entitled to under the plan. And as you said, Your Honor, the allegation is that the benefits under the new formula were lower than they would have been under the old formula.

THE COURT: Well, what do you say to your adversary's argument that the one clear remedy for failure to give notice is that the old plan continues unchanged?

MR. BLUMENFELD: Well, there are a few points, Your Honor. First, with respect to the old plan, we have to keep in mind that the District Court found as fact and the basis for its decision in rewarding the remedy it awarded was that the old plan was amended twice over the span of the year. And the first amendment froze benefits in the old plan. That means zero benefit accruals for that entire group of

people. And the District Court Judge held a few things regarding that which are important. First, that that freeze was entirely lawful, and second, that it was fully and properly disclosed. And the District Court also said in its remedies opinion that plaintiff never challenged either of those issues, the lawfulness of the freeze or the appropriateness of the disclosure.

And the one thing the District Court Judge made absolutely clear, as he said in his remedies opinion, was that every participants may or may not have understood about their benefits, the one thing that was absolutely clear is that nobody expected to be receiving benefits under the old plan.

THE COURT: But they did receive retroactive benefits for that period under the new plan.

MR. BLUMENFELD: Correct. And the District Court also said about that, first, Your Honor, that the freeze was not enacted by CIGNA in bad faith. And the District Court also concluded that had it reached a different conclusion about CIGNA's intentions in that regard, it could have ordered a different remedy. And the District Court also said that the fact that CIGNA ordered retroactive relief -- excuse me, retroactive benefits starting in December of 1998, was a benefit to participants that CIGNA didn't have to do and that CIGNA was being more generous in the process than it needed to be.

THE COURT: So, he considered various forms of relief, didn't he?

MR. BLUMENFELD: Certainly, Your Honor. The District Court considered alternative forms of relief and reached a conclusion as to what the appro-

priate -- excuse me, the appropriate relief would be under those circumstances.

THE COURT: What the most equitable remedy would be is what it comes down to.

MR. BLUMENFELD: Correct. Now, the one issue that we take with that, Your Honor, is that, as I mentioned, people got an account statement that told them precisely what their opening account balance was. A few months after that -- and, again, before the cash balance plan was even adopted, they got a statement telling them, again, what their opening account balance was and the amount of pay credit and interest credit that they earned during that period of time.

As this Court recognized in the Esmond (phonetic) case and as this Court recognized again in the Hurt v. Equitable case, in a cash balance plan, you get a statement every year and that tells you what your benefit is. And then each year thereafter, participants got an annual account statement and a total compensation report. The annual account statement opened --

THE COURT: I'm sorry, you do seem to be skating over the key notice requirement which is to say what the change or what the impact of the change is going to be. Now, as I said, you might say, you know, you're going to get $612 a month in Social Security. Are you happy? And the answer would be, well, how does that compare with what I could get or what I might get under other schemes? You can't tell from just the number whether you should be satisfied or whether you're getting a square deal.

MR. BLUMENFELD: Well, Your Honor, two things. First, the 204(H) statute that was in effect at

the time and the summary material modifications and summary plan description requirements didn't require that you do a comparison of old plan versus new. But second of all, the new plan, such as --

THE COURT: But you did.

MR. BLUMENFELD: Yes, Your Honor, there was a statement to the effect that benefits were comparable. But in the face of --

THE COURT: That sort of does suggest that your adversary is onto something when he says that the purpose of that disclosure was to dampen down any objection or unhappiness among employees so that they will be happier with their salaries and their benefits.

MR. BLUMENFELD: The question, Your Honor, boils down to what is the prejudice, what is the harm to participants when participants are specifically told you're entitled to the pension benefit at the end of 2000 that is $120,000? Whatever else you may or may not be entitled to -- and I agree with you, Your Honor, it's an awkward issue to be resolved on a classwide basis.

But whatever else may be the case, that participant shouldn't be entitled to any more in benefits than the $120,000 that the participant specifically was told they're going to receive. And there's no finding by the District Court or conclusion by the District Court that any plan participant thought they were going to get any more money in terms of their pension benefits than they were told in their annual account statement and total compensation reports.

If I could, Your Honor, I'd also like to follow up on the question about the inappropriateness of this as a class.

THE COURT: But that hasn't been challenged.

MR. BLUMENFELD: Well, it has in that we've argued, Your Honor, that the likely prejudice harmless error, the harm question, is an individualized question. And whether it's a situation where the class should be decertified or whether individualized hearings and discovery are required within the class action mechanism --

THE COURT: Who's asking for decertification of the class?

MR. BLUMENFELD: Well, Your Honor, in the District Court, we had suggested to the District Court that it needed to do either of those hearings for decertifying --

THE COURT: Yeah, but you're here now.

MR. BLUMENFELD: Yes, Your Honor. And what we're asking for is for a determination that the likely prejudice and harmless error analysis be an individualized one and that the case be --

THE COURT: Did you call any of the individuals as witnesses?

MR. BLUMENFELD: There were 11 class members, including three plaintiffs, I believe, who testified during the course of the trial.

THE COURT: You called them as your witnesses?

MR. BLUMENFELD: No, the plaintiffs called them --

THE COURT: No, right.

MR. BLUMENFELD: -- and we cross examined each one of them.

THE COURT: Did you seek any other besides that?

MR. BLUMENFELD: No, we didn't, Your Honor.

THE COURT: You did not.

MR. BLUMENFELD: Because if the question -- Your Honor, if the question is an individualized one, if what one plan participant likely would have done or actually would have done or how one plan participant was harmed, if it matters what plaintiff one says versus plaintiff two, then calling plaintiffs 8 through 11 shouldn't change the analysis.

THE COURT: Perhaps you might have convinced the District Judge as a matter that the law he was applying or taking into account the testimony coming from a greater representative sample so as to show the differences which you now allege exist.

MR. BLUMENFELD: Well, Your Honor, I think we successfully did that with the 11 who testified. As Mr. Bruce explained earlier, one of the plaintiffs -- excuse me, one of the class members actually got a statement which compared his benefits under the old plan versus the new plan. There is a finding of fact about that. There is no finding of fact in the District Court's record that he was threatened with any job action. How that participant complained he was harmed or why that participant's harm should be the same as another plan participant's is a different question.

And likewise, Your Honor, a number of the plan participants who testified testified that they were surprised and disappointed when they got their opening account balance statements because it showed them that they weren't entitled to as much

as they might have thought before. And keep in mind, again, this was six months before the cash balance plan was even adopted.

THE COURT: But, generally speaking, if the more junior workers will do better under the new plan and the older workers will, generally speaking, experience rough comparability, then it wouldn't seem like this remedy is something your client should much complain about.

MR. BLUMENFELD: Well --

THE COURT: In financial terms or in terms of an upheaval of your commitment of financial resources to pensions.

MR. BLUMENFELD: Well, Your Honor, what I would say is that the ultimate liability to the CIGNA pension plan was in the range of $70 to $100 million for disclosure violations, for benefits that CIGNA certainly didn't intend to pay and benefits that are in the CIGNA pension plan that were supposed to be available to pay benefits to others. And we're left in a circumstance here, as the Seventh Circuit recognized in the Cooper v. IBM case, where there are claims being alleged on a classwide basis that cause employers and plans to incur liabilities that weren't expected. This Court recognized that concern in, among other places, it's 2002 decision in Glock.

ERISA has a written document requirement and a written plan amendment requirement and plans can only be modified when benefits are -- when that procedure is complied with. And the reason for that is to ensure that a plan administrator, which is, by the way, the entity responsible for issuing these plan communications, not the plan sponsor, which was the Board of Directors of CIGNA, but that a plan admin-

istrator can't bind a plan to contractually pay benefits that are not actually due under the terms of the plan.

The only other thing I'd like to add about the likely prejudice, harmless error analysis being individualized is this Court's precedent fully supports that notion, including Burke (phonetic) and including Winereb (phonetic) and, most directly, including this Court's decision in Wilkens in 2006, where the Court focused on the harm question you were just asking and said, what is it that this plaintiff likely would have done had he received a communication that satisfied ERISA's disclosure requirements? And the Court remanded to the District Court for findings of fact as to that plaintiff and what that individual likely would have done.

Of course, what that individual likely would have done in that circumstance may very well be very different than what any other individual would have done in that circumstance, which just further confirms that it's an individualized question.

THE COURT: Thank you.

MR. BLUMENFELD: Thank you, Your Honors.

MR. MOUKAWSHER: Good afternoon, Your Honors. May it please the Court, I'm attorney Thomas Moukawsher, co-counsel for the class. I would like to directly address your concern, Judge Jacobs, in terms of the issue of harm to the class members.

The issue of harm was settled by this Court in two cases on which the District Court relied on. That was Burke v. Kodak and the Winereb case v. the hospital. And in that case, in Burke, it was established that the standard that you look at in a class action of this type would be a standard of likely

harm, not individualized harm. And, of course, CIGNA has argued in the lower courts for these individualized hearings, in their own phrase, to grind these hearings to a halt so that you do, indeed, have to have 27,000 individual hearings about harm. This Court anticipated that kind of problem in Burke and explained that if there was evidence that there was no actual --

THE COURT: But what is the likely harm that each person suffered measured in dollar terms? I mean, like you say, you don't have to have individual hearings for 27,000 people when it looks to me as though the class action certification issue is already largely behind us. So, I think -- and we do have 27,000 possible claimants. Therefore, you're saying, with some force, that it would be really impractical to have 25 or 27,000 hearings. So, you want to rely on the likely harm.

What is the likely harm measured in dollar terms that follows from the failure to give timely notice as to the nature of a change in pension that the company was privileged to make?

MR. MOUKAWSHER: Well, it's the benefits, Your Honor, because it's interesting here that they say these are benefits that they didn't expect to pay. And the problem here is, well, they might not have expected to pay them, but they promised them and the class members relied on those promises in making decisions that the Court cited, all kinds of decisions. There was a class -- each person makes their own decision about retirement and about whether to keep exchanging their labor for the package of compensation and benefits, and they thought they were exchanging their labor for benefits that included the

benefits they promised them, comparable or better benefits than the old plan.

It is these comparable benefits or better benefits that was promised. That's the measure of damages. And that's why Section 204(H) says that the remedy is that no amendment may be effected unless it's been properly disclosed. That's what the statutory text says. The amendment may not be effected. That measures the harm right there by saying it's measured in the benefits that are actually lost. You have to give what you promised if you don't disclose it right. So, that's the measure of the harm and that's what this Court held in the Frommer case when it undid the transaction.

THE COURT: (Inaudible) thing, and I'm not sure it bears on anything one way or the other, but it's a little confusing to me. Is there an allegation that the younger workers did not get a superior benefit under Plan B?

MR. MOUKAWSHER: I think the evidence at trial actually showed that the -- that there were some that got a better benefit, some that did not get harmed, some that suffered from wear-away, about 20 out of 26,000 suffered from the wear-away effect and 6,000 did not. 6,000 people, under the District Court's order, got no remedy at all, nothing of any kind.

And so, you know, here there are intentional misrepresentations found, and the District Court's dilemma was, as it put it itself, it wasn't sure what to do, it thought it was blocked by this technical amendment. And the question that we've raised on appeal is that the District Court should have the discretion to offer a full remedy and the District Court said it was blocked from offering a full remedy. It

did not say I'm simply exercising my discretion to limit the remedy. It said I cannot -- I do not have the power and, in fact, sua sponte stayed its proceedings and said, get up to the Second Circuit because I need my authority clarified.

Thank you, Your Honors.

THE COURT: Thank you both -- all three of you actually. We'll reserve decision.

(The recording was concluded.)

* * *

Trial Exhibit 1

EXHIBIT
P-5
12-3-02

CIGNA PENSION PLAN

PART B

(Amended and Restated Effective January 1, 1998)

RECITALS

As of the dates shown below, Aetna Insurance Company, Connecticut General Life Insurance Company, and INA Corporation or their respective predecessors established programs for providing retirement benefits and other benefits for certain of their employees and their beneficiaries and certain employees of their participating subsidiaries and affiliates (the "Prior Plans").

Aetna Insurance Company Retirement Plan ("Aetna Plan") - August 1, 1934

Connecticut General Life Insurance Company Retirement Plan ("CG Plan") - January 1, 1933

United States Pension Plan of INA Corporation and Affiliated Companies (INA Plan") - October 27, 1943

Effective as of January 1, 1983, the Aetna Plan and CG Plan were merged into the INA Plan, and the INA Plan was amended and restated in its entirety as the United States Pension Plan of CIGNA Corporation and Affiliated Companies and is hereinafter

referred to as the "Plan". The Plan is a continuation of the Prior Plans.

Effective as of January 1, 1989, the Plan was amended and restated in compliance with the Tax Reform Act of 1986 and other laws and regulations, and a new, separate benefit accrual formula was adopted for employees whose service commenced after December 31, 1988, and for certain other employees described in the Plan (referred to as "New Formula Participants").

Effective January 1, 1991, the Pension Plan of CIGNA Healthplan, Inc. (the "CHP Plan") was merged into this Plan, and the CHP Plan became a Prior Plan.

Effective as of September 1, 1992, the Plan was renamed the CIGNA Pension Plan.

Effective as of December 31, 1993, the Plan was amended to change from the elapsed time method of counting service to the "hours of service" method; to permit certain Participants whose employment is affected by a sale of the assets or stock of a Participating Company to be treated as having separated from service; and to provide special accelerated vesting rights to certain of such Participants.

Effective December 31, 1997, the Plan was amended to cease future benefit accruals for certain participants who will accrue future benefits under an account balance formula; to provide that no employee who would otherwise be eligible to be a New Formula Participant after December 31, 1997, shall become eligible to accrue any benefits under the Plan; and to provide that such cessation of benefit accruals and exclusion from eligibility shall remain in effect until

the adoption of a subsequent amendment to the Plan.

Effective January 1, 1998, the Plan is amended to change the formula under which certain participants accrue benefits to an account balance formula. The provisions of the Plan applicable to participants who continue to accrue benefits under the same benefit formula as applied to them before 1998 are set forth in Part A of the Plan. The provisions of the Plan applicable to participants who, effective on or after January 1, 1998, commence accruing benefits under the account balance formula are set forth in this Part B of the Plan. The Plan, as set forth in Part A and Part B, continues to constitute a single plan within the meaning of Section 414(l) of the Internal Revenue Code of 1986, as amended.

Except as otherwise specifically provided, the provisions of this Part B shall apply only to participants who are employees on or after January 1, 1998, and the rights and benefits, if any, of a former employee shall be determined in accordance with the provisions of the Plan in effect on the date his employment terminated.

No provisions of this Plan shall operate to diminish or adversely affect the amount or terms of retirement benefits accrued in respect to a Participant's coverage under the Prior Plan or Plans.

It is the intent of CIGNA Corporation that the Plan shall be established and maintained as a qualified retirement Plan which is in full compliance with ERISA and the terms of Section 401(a) of the Internal Revenue Code of 1986, as amended from time to time.

TABLE OF CONTENTS
(continued)

Page

RECITALS i

Article I – Definitions 1
1.1 "Accrued Benefit" 1
1.2 "Acquired Entity" 1
1.3 "Actuary" 1
1.4 "Adjustment Factor" 1
1.5 "Aetna Plan" 2
1.6 "Applicable Interest Rate" 2
1.7 "Applicable Mortality Table" 2
1.8 "Beneficiary" 2
1.9 "Benefit Commencement Date" 2
1.10 "Benefit Credit" 2
1.11 "Board of Directors" 2
1.12 "CG Plan" 2
1.13 "Change of Control" 3
1.14 "Chief Executive Officer" 3
1.15 "CHP Plan" 3
1.16 "Code" 3
1.17 "Committee" 3
1.18 "Eligible Earnings" 3
1.19 "Eligible Part B Employee" 6
1.20 "Employee" 8
1.21 "Equivalent Actuarial Value" 8
1.22 "ERISA" 8
1.23 "Floor Interest Rate" 8
1.24 "Fund" 8
1.25 "Group Annuity Contract(s)" 8
1.26 "Hour of Service" 8
1.27 "INA Plan" 9

1.28 "Initial Retirement Account" 9
1.29 "Integration Level" 10
1.30 "Interest Credits" 11
1.31 "Lincoln" 11
1.32 "Minimum Benefit" 11
1.33 "New Formula Participant" 12
1.34 "Normal Retirement Age" 12
1.35 "Normal Retirement Date" 12
1.36 "One-Year Break in Service" 12
1.37 "PEG Plan" 12
1.38 "Parental Absence" 12
1.39 "Part A" 12
1.40 "Part A Accrued Benefit" 12
1.41 "Part B" 13
1.42 "Participant" 13
1.43 "Participating Company" 13
1.44 "PBGC" 13
1.45 "Plan" 13
1.46 "Plan Administrator" 13
1.47 "Plan Year" 13
1.48 "Prior Plan or Plans" 13
1.49 "Prior Service" 13
1.50 "Qualified Annuity" 13
1.51 "Qualified Domestic Relations Order" 13
1.52 "Reemployment Commencement Date" 14
1.53 "Related Company" 14
1.54 "Restatement Date" 14
1.55 "Retirement Account" 14
1.56 "Retirement Account Annuity Benefit" 14
1.57 "Spouse" 14
1.58 "TEFRA" 14
1.59 "Termination for Cause" 14
1.60 "Trust" 14

1.61 "Trustee" 15
1.62 "Year of Credited Service" 15
1.63 "Year of Vesting Service" 15

Article II - Participation in the Plan 16
2.1 Commencement of Participation 16
2.2 Active Participation 16
2.3 Suspended Participation 16
2.4 Participation Upon Reemployment or Transfer After the Restatement Date 16

Article III - Service 18
3.1 Service - General 18
3.2 Years of Vesting Service 18
3.3 Years of Credited Service 19
3.4 Leaves of Absence 21
3.5 Qualified Military Service 21

Article IV - Benefit Credits And Interest Credits 22
4.1 Benefit Credits 22
4.2 Interest Credits 23

Article V - Payment of Benefits 25
5.1 Vesting of Benefits 25
5.2 Normal Retirement Benefits 25
5.3 Termination Benefits 26
5.4 Cash-Out of Small Benefits 26
5.5 Consent to Distribution 27
5.6 Sale of Assets or a Subsidiary 27
5.7 General Payment Provisions 27

Article VI - Maximum Retirement Benefits 29
6.1 Statutory Maximum Retirement Benefit Limitations 29

6.2 Participation in One or More Defined Contribution Plans 31
6.3 Definitions Applicable to Sections 6.1 and 6.2 31
6.4 Aggregation Rules 35
6.5 Discrepancy With Code 35

Article VII - Forms of Benefits; Distribution Requirements 36
7.1 Qualified Annuity 36
7.2 Optional Forms of Retirement Benefits 38
7.3 Special Provisions for Participants with Initial Retirement Accounts 40
7.4 Suspension of Payments 41
7.5 Requirements Concerning Distributions 42
7.6 Special Rule for Former Participants of the PEG Plan 46
7.7 Direct Rollovers 46

Article VIII - Pre-Retirement Death Benefits 48
8.1 Amount and Form of Pre-Retirement Death Benefit 48
8.2 Time of Distribution 48
8.3 Beneficiary Designation 49
8.4 Cash-Out of Small Benefits 50

Article IX - Funding 52
9.1 Contributions 52
9.2 Time of Contributions 52
9.3 Contributions Irrevocable -- Limited Refunds 52
9.4 Use of Forfeitures 53

Article X - Participant Contributions 54
10.1 Definitions Applicable to Article X 54
10.2 Participant Contributions in General 54
10.3 Required Employee Contributions to the Aetna and CG Plans 54
10.4 Required Employee Contributions to the PEG Plan 56
10.5 Vesting in Participant Contributions 56
10.6 Forms of Payment 56

Article XI – Trust 57
11.1 Trust Agreement 57
11.2 Payment Through Trustee 57

Article XII - Fiduciary Responsibility Provisions 58
12.1 Corporate Benefit Plan Committee 58
12.2 Role of Committee 58
12.3 Multiple Fiduciary Capacity 58
12.4 Delegation and Allocation of Fiduciary Responsibilities 58
12.5 Appointment of Committee Members 59
12.6 Resignation and Termination of Employment of Fiduciary 59
12.7 Limitation of Guarantees on Investments 59

Article XIII - Plan Administration 60
13.1 Appointment and Acceptance 60
13.2 Duties and Authority; Discretionary Authority 60
13.3 Expenses and Assistance 61

13.4 Participants and Other Payees - Data 61
13.5 Claims Procedure 61
13.6 Clerical Error 62

Article XIV - Amendment and Termination 64
14.1 Amendment 64
14.2 Termination or Partial Termination 65
14.3 Limitations re Highly Compensated Employees 67
14.4 Withdrawal from Participation 68
14.5 Change of Control 69

Article XV - Miscellaneous 72
15.1 Limitation of Rights; Employment Relationship 72
15.2 Reorganization; Transfer of Assets 72
15.3 Construction 72
15.4 Non-Assignment 73
15.5 Qualified Domestic Relations Orders 73
15.6 Governing Law 74
15.7 Incapacitated Participant or Beneficiary 74
15.8 Non-Liability of the Employer 74
15.9 Expenses 74
15.10 Qualified Military Service 75

Article XVI - Effect of Top-Heavy Status 76
16.1 Effect of Top-Heavy Status 76
16.2 Top-Heavy Definitions 76
16.3 Minimum Accrued Benefit 78
16.4 Vesting 79
16.5 Impact on Maximum Benefits 79

CIGNA PENSION PLAN
PART B

(Amended and Restated Effective January 1, 1998)

ARTICLE I - Definitions

The following defined terms are indicated by the capitalized initial letters wherever they appear in Part B.

1.1 "Accrued Benefit" shall mean a Participant's accrued benefit under this Part B, determined in accordance with paragraphs (a), (b), and (c) below.

(a) General Rule. Except as provided in paragraph 1.1(b) or 1.1(c), a Participant's Accrued Benefit, expressed in the form of an immediate lump sum distribution, shall be an amount equal to the balance of his Retirement Account on the date of determination.

(b) Special Rule When Floor Interest Rate Applies. With respect to a Participant whose Benefit Commencement Date occurs in a Plan Year in which the interest rate for purposes of Interest Credits is the Floor Interest Rate, such Participant's Accrued Benefit, expressed in the form of an immediate lump-sum distribution, shall not be less than an amount which is the present Equivalent Actuarial Value (determined using the Applicable Interest Rate and the Applicable Mortality Table) of the Participant's Retirement Account Annuity Benefit.

(c) Minimum Benefit. In the case of a Participant who has a Part A Accrued Benefit which is converted into an Initial Retirement Account, such Participant's Accrued Benefit, expressed in the form of an immediate lump sum distribution, shall in no event be less than the present Equivalent Actuarial Value (determined using the Applicable Interest Rate and the Applicable Mortality Table) of the Participant's Minimum Benefit.

1.2 "Acquired Entity" shall mean a corporation or unincorporated entity that is acquired by CIGNA Corporation or a Related Company.

1.3 "Actuary" shall mean the enrolled actuary who is appointed to make actuarial determinations or certifications for the Plan.

1.4 "Adjustment Factor" shall mean the applicable cost of living adjustment factor prescribed by the Secretary of the Treasury, in accordance with Code Section 415(d), as amended by the Uruguay Round Agreements Act.

1.5 "Aetna Plan" shall mean the Aetna Insurance Company Retirement Plan in effect on December 31, 1982.

1.6 "Applicable Interest Rate" shall mean, under Code Section 417(e)(3), the annual rate of interest on 30-year Treasury securities, as specified by the Commissioner of Internal Revenue, for November of the year before the Plan Year which includes the Benefit Commencement Date; provided, however, that for purposes of subparagraph 1.28(b)(2)b, "Applicable Interest Rate" shall mean, under Code Section 417(e)(3), the

annual rate of interest on 30-year Treasury securities, as specified by the Commissioner of Internal Revenue, for the second calendar month preceding the beginning of the Plan Year in which the Initial Retirement Account is determined.

1.7 "Applicable Mortality Table" shall mean, under Code Section 417(e)(3), the table described in Rev. Rul. 95-6, or any successor table prescribed by the Commissioner of Internal Revenue in revenue rulings, notices or other published guidance.

1.8 "Beneficiary" shall mean the person, trust or estate entitled under the provisions of this Plan to receive benefits after the death of a Participant. Unless a Participant designates otherwise in accordance with the applicable provisions of the Plan (including spousal consent requirements), his Beneficiary shall be his qualifying surviving Spouse. If, upon the death of a Participant, there is no valid designation of Beneficiary on file with the Plan Administrator, or the designated Beneficiary has predeceased the Participant, the Participant's Beneficiary shall be in order of priority, the Participant's:

(a) Surviving Spouse, or, if none,

(b) Surviving child(ren), including adopted child(ren), equally, or, if none,

(c) Surviving parent(s), equally, or, if none,

(d) Estate.

The determination of the Plan Administrator as to which persons, if any, qualify within any of the above categories shall be final and conclusive upon all persons.

1.9 "Benefit Commencement Date" shall mean the first day of the first period for which an amount is paid as an annuity or in any other form.

1.10 "Benefit Credit" shall mean a benefit accrual amount added to a Participant's Retirement Account for a Plan Year under section 4.1.

1.11 "Board of Directors" shall mean the Board of Directors of CIGNA Corporation.

1.12 "CG Plan" shall mean the Connecticut General Life Insurance Company Retirement Plan in effect on December 31, 1982.

1.13 "Change of Control" shall mean:

(a) A corporation, person or group acting in concert as described in Section 14(d)(2) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), holds or acquires beneficial ownership within the meaning of Rule 13d-3 promulgated under the Exchange Act of a number of preferred or common shares of CIGNA Corporation having voting power which is either (1) more than 50% of the voting power of the shares which voted in the election of directors of CIGNA Corporation at the shareholders' meeting immediately preceding such determination, or (2) more than 25% of the voting power of CIGNA Corporation's outstanding common shares; or

(b) As a result of a merger or consolidation to which CIGNA Corporation is a party, either (1) CIGNA Corporation is not the surviving corporation or (2) directors of CIGNA Corporation immediately prior to the merger or consolidation constitute less

than a majority of the board of directors of the surviving corporation; or

(c) A change occurs in the composition of the Board of Directors at any time during any consecutive 24 month period such that the "Continuity Directors" cease for any reason to constitute a majority of the Board. For purposes of the preceding sentence "Continuity Directors" shall mean those members of the Board who either: (1) were directors at the beginning of such consecutive 24 month period; or (2) were elected by, or on nomination or recommendation of, at least a majority (consisting of at least nine directors) of the Board.

1.14 "Chief Executive Officer" shall mean the Chief Executive Officer of CIGNA Corporation.

1.15 "CHP Plan" shall mean the Pension Plan of CIGNA Healthplan, Inc., in effect on December 31, 1990.

1.16 "Code" shall mean the Internal Revenue Code of 1986, as amended.

1.17 "Committee" shall mean the CIGNA Corporation Corporate Benefit Plan Committee, or a successor entity or group of persons, that is the Named Fiduciary for the Plan as described in Article XII.

1.18 "Eligible Earnings" shall mean those elements of compensation which are paid to an Eligible Part B Employee by a Participating Company as established by the payroll or personnel records of the Participating Company. For purposes of benefit accrual, Eligible Earnings are taken into account for the period in which the

pay date occurs; provided, however, that any amounts described in paragraph 1.18(a) which are earned or accrued while an Eligible Part B Employee and paid after the Employee's severance from employment, but before the time provided in subparagraph 1.18(b)(2), shall be treated as if paid immediately prior to such severance from employment.

(a) Eligible Earnings shall include the following compensation elements:

(1) For an Eligible Part B Employee who is paid on a salaried basis, a salary plus bonus basis, or an hourly basis:

a. The Employee's base salary or other base compensation;

b. Current cash incentive or performance bonuses;

c. Overtime or shift premium pay; and

d. Commissions or sales compensation, but not those amounts which are eligible earnings for either a defined contribution pension or a defined benefit pension plan (other than this Plan) sponsored by CIGNA Corporation or a Participating Company;

(2) For an Eligible Part B Employee whose compensation is based upon an earnings or compensation formula which is only partly in the form of a salary rate, the total compensation paid to him under his employment,

earnings or compensation agreement except those earnings excluded in paragraph 1.18(b);

(3) For an Eligible Part B Employee participating in either the CIGNA 401(k) Plan, or any successor plan containing a qualified cash or deferred arrangement under Code Section 401(k), or a cafeteria plan under Code Section 125, contributions made by the Participating Company under such plans on behalf of the Eligible Part B Employee pursuant to his deferral election under the qualified cash or deferral arrangement (but not employer matching contributions) or his salary reduction election under the cafeteria plan;

(4) For an Eligible Part B Employee during any unpaid leave of absence authorized by a Participating Company or any leave of absence during which such Employee receives disability benefits, for the period from the time the leave began until (but not beyond) the earlier of (i) the last day of such leave of absence, or (ii) the later of June 30, 1998, or the last day of the calendar month in which occurs the 183rd day of such leave of absence, the Eligible Part B Employee's rate of base salary or guaranteed compensation formula earnings in effect at the time the leave began, plus any amounts of cash bonuses or other variable compensation described in

paragraph 1.18(a) actually paid to such Employee during such period;

(5) For an Eligible Part B Employee during any paid leave of absence other than a leave during which he receives disability benefits, the Eligible Part B Employee's earnings otherwise described in subparagraphs 1.18(a)(1), (2), (3) and (6) for a period ending on the later of June 30, 1998, or the last day of the calendar month in which occurs the 183rd day of such paid leave. Such Employee's earnings during the portion of any paid leave of absence extending beyond the end of the period described in the preceding sentence shall not be Eligible Earnings; and

(6) Other types of compensation determined by the Plan Administrator in a uniform and non-discriminatory manner to be similar to the types of compensation listed in this paragraph 1.18(a).

(b) All other types of compensation are not Eligible Earnings. Earnings which are not Eligible Earnings include, but are not limited to:

(1) Compensation voluntarily deferred by the Eligible Part B Employee, either when deferred or when subsequently paid (except as provided in subparagraph 1.18(a)(3));

(2) Any amounts earned or accrued while an Employee, but paid after the end

of the calendar month following the calendar month in which the Employee has a severance from employment;

(3) Expense reimbursements or allowances;

(4) Payments and awards for suggestions, employment referral, relocation, educational achievements or similar awards;

(5) Cash or cash values paid under a long term executive compensation plan including, but not limited to, stock grants, stock options and/or stock appreciation rights;

(6) The cash value of merchandise or similar awards;

(7) The imputed taxable value of merchandise, employee benefits, including company automobiles and other fringe benefits, or similar items;

(8) Lump sum payments for unused time off (such as vacation and personal holidays);

(9) Salary, commissions or other income which is eligible earnings in a defined contribution pension or defined benefit pension plan of CIGNA Corporation or a Participating Company (but not this Plan or a supplemental profit sharing or matched savings plan);

(10) Severance pay; and

(11) Other compensation which may be either similar or dissimilar to that ex-

cluded under this paragraph 1.18(b) but which is not included in Eligible Earnings under paragraph 1.18(a) by the Plan Administrator on a uniform, non-discriminatory basis.

"Eligible Earnings" shall not include the amount of any annual compensation received by a Participant which exceeds $150,000, as adjusted by the Commissioner of Internal Revenue for increases in the cost of living in accordance with Code Section 401(a)(17)(B), as amended by the Omnibus Budget Reconciliation Act of 1993 (the "OBRA '93 limit"). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding twelve months, over which Eligible Earnings is determined (the "determination period") beginning in such calendar year. If a determination period consists of fewer than twelve months, the OBRA '93 limit shall be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve. If Eligible Earnings for any prior determination period is taken into account in determining a Participant's benefits accruing in any Plan Year beginning after December 31, 1993, the Eligible Earnings for such prior determination period is subject to the OBRA '93 limit in effect for such prior determination period. For this purpose, for determination periods beginning before January 1, 1994, the OBRA '93 limit is $150,000.

1.19 "Eligible Part B Employee" shall mean an Employee who meets the requirements of paragraph 1.19(a) and 1.19(b) and who is not excluded under paragraph 1.19(c).

(a) An Employee meets the requirements of this paragraph 1.19(a) if (1) he is employed

by a Participating Company, and (2) he works within the United States (including the District of Columbia, Guam, Puerto Rico and the Virgin Islands) or, if he does not work within the foregoing jurisdictions, he is designated by the Plan Administrator as an expatriate Employee who is eligible to participate in the Plan.

(b) An Employee meets the requirements of this paragraph 1.19(b) if he is in any of the following categories:

(1) He was a New Formula Participant under Part A prior to January 1, 1998;

(2) He was a participant (including a suspended participant) under Part A other than a New Formula Participant on December 31, 1997, and the sum of his age (disregarding any fraction of a year) and Years of Credited Service (disregarding any fraction of a year) as of December 31, 1997 was less than 45;

(3) He is credited, on or after January 1, 1998, with his first Hour of Service as an Employee described in paragraph 1.19(a), or his first Hour of Service as an Employee described in paragraph 1.19(a) after a severance from employment; or

(4) After being employed in employment described in paragraph 1.19(c)(3), (5) or (6), he transfers on or after January 1, 1998, to employment described in paragraphs 1.19(a) and 1.19(b).

(c) An Eligible Part B Employee shall not, however, include:

(1) An Employee who continues on and after January 1, 1998 to be eligible to participate in Part A of the Plan;

(2) An Employee who was a participant in Part A on or before December 31, 1997 and who, absent transfer to employment with a Related Company that is not covered by Part A, would have continued to be eligible to participate in Part A on or after January 1, 1998;

(3) An Employee who belongs to a collective bargaining unit which has entered into a collective bargaining agreement with a Participating Company, unless such agreement specifically provides for coverage of the Employee under this Part B;

(4) An Employee who at any time during 1997 was employed by Healthsource, Inc. (or a company that was one of its subsidiaries before July 31, 1997); such exclusion to apply solely to the period during the Plan Year beginning January 1, 1998 during which such Employee remained employed in a position in the CIGNA HealthCare Division; provided, however, that such exclusion shall not apply (A) to any Employee who was first employed by Healthsource, Inc. (or a company that was one of its subsidiaries before July 31, 1997) in 1997 in

a temporary position and then transferred after December 31, 1997 to other than a temporary position and (B) after the date of such transfer.

(5) An Employee who is a member of a class of Employees covered by, and who is accruing a benefit based upon current service and compensation, in another defined benefit pension plan or a defined contribution plan of CIGNA Corporation or a Participating Company qualified under Code Section 401(a), unless eligibility for Part B shall be approved by the Board of Directors; provided, however, that eligibility for or participation in a supplemental profit sharing or matched savings plan of CIGNA Corporation or a Related Company shall not prevent an Employee from being an Eligible Part B Employee; or

(6) A leased employee considered an Employee of CIGNA Corporation or a Related Company solely by operation of Code Section 414(n), or any other individual who is classified by CIGNA Corporation or a Related Company (A) as a leased employee, (B) as an independent contractor, or (C) in any other category which is not a common law employee, as reflected in the official payroll and personnel records of CIGNA Corporation or a Related Company.

1.20 "Employee" shall mean a common law employee of CIGNA Corporation or a Related Company, and shall include any leased employee within the meaning of Code Section 414(n)(2). Notwithstanding the foregoing, if such leased employees constitute less than 20% of the non-highly compensated work force of CIGNA Corporation and the Related Companies within the meaning of Code Section 414(n)(5)(C)(ii), the term "Employee" shall not include those leased employees covered by a plan described in Code Section 414(n)(5).

1.21 "Equivalent Actuarial Value" shall mean an alternative form of benefit which has the equivalent value to the defined benefit of Part B, except as otherwise hereinafter expressly provided, as determined by the Actuary for the Plan based on the following:

(a) Mortality according to the Applicable Mortality Table, and

(b) Interest at a rate of 7% per annum.

1.22 "ERISA" shall mean the Employee Retirement Income Security Act of 1974 (P.L. 93-406) as amended from time to time.

1.23 "Floor Interest Rate" shall mean the interest rate set forth in subparagraph 4.2(b)(1).

1.24 "Fund" shall mean the fund or funds established for accumulating contributions to and assets of the Plan.

1.25 "Group Annuity Contract(s)" shall mean the contract or contracts held by the Trustee to fund some or all benefits under this Plan.

1.26 "Hour of Service" shall mean:

(a) Each hour for which an Employee is directly or indirectly paid, or entitled to payment, by CIGNA Corporation or a Related Company for the performance of duties. An hour described in this paragraph 1.26(a) shall be credited to the Employee for the Plan Year in which the Employee is paid for the hour;

(b) Each hour for which an Employee is directly or indirectly paid, or entitled to payment, by CIGNA Corporation or a Related Company for reasons (such as vacation, severance, sickness or disability) other than for the performance of duties. Included shall be any hours, but not in excess of 501 hours, for which an Employee receives (1) severance pay under a severance pay plan or arrangement and (2) any payment upon termination of employment for earned but unused vacation days and personal holidays. If severance is paid in a lump sum, hours of service shall be credited ratably over the period to which such payment relates (to a maximum of 501 hours), in the same manner as if severance had been paid in installments. Hours under this subsection shall be calculated and credited pursuant to §2530.200b-2 of the Department of Labor Regulations which are incorporated herein by this reference;

(c) Each hour for which back pay, irrespective of mitigation of damage, is either awarded or agreed to by CIGNA Corporation or a Related Company. These hours shall be credited to the Employee for the Plan Year(s) to which the award or agreement

pertains rather than the Plan Year in which the award, agreement or payment is made; and

(d) Each hour during an Employee's approved leave of absence, whether paid or unpaid. An Employee classified as "exempt" under the Fair Labor Standards Act shall be credited with 190 Hours of Service for each month of such leave of absence; every other Employee shall be credited with the Hours of Service which otherwise would normally have been credited to such individual but for such approved leave of absence, or in any case in which the Plan is unable to make such determination, eight (8) Hours of Service per day of such approved leave of absence.

Each Employee classified as "exempt" under the Fair Labor Standards Act shall be credited with 190 Hours of Service for each month in which the Employee would be deemed entitled to credit for any Hour of Service in accordance with paragraph (a), (b) or (c) above. Every other Employee shall be credited with Hours of Service on the basis of the records of CIGNA Corporation or any Related Company for which such Hours of Service shall be performed or shall be deemed creditable in accordance with paragraph (a), (b) or (c) above. In no event shall an Hour of Service be allowed or computed in a manner less liberal than the manner described in §2530-200b-2 of Department of Labor Regulations.

1.27 "INA Plan" shall mean the United States Pension Plan of INA Corporation and Affiliated Companies in effect on December 31, 1982.

1.28 "Initial Retirement Account" shall mean the present Equivalent Actuarial Value of a Participant's Part A Accrued Benefit expressed in the form of a single life annuity commencing at the applicable age specified below. For this purpose:

(a) With respect to a Participant who is an Eligible Part B Employee on January 1, 1998, and the sum of whose age (disregarding any fraction of a year) and Years of Credited Service (disregarding any fraction of a year) on December 31, 1997 is 55 or greater,

(1) The Participant's Part A Accrued Benefit shall be reduced to age 62 (or, if later, the Participant's age on January 1, 1998) using the applicable early retirement reduction factors under the provisions of Part A in effect on December 31, 1997; and

(2) The present "Equivalent Actuarial Value" of the Participant's Part A Accrued Benefit under subparagraph 1.28(a)(1) shall be calculated as of January 1, 1998, using the yield on 5-year U.S. Treasury Constant Maturities for November, 1997 less 75 basis points, and the Applicable Mortality Table.

(b) With respect to any Participant not described in paragraph 1.28(a) whose Part A Accrued Benefit is converted into an Initial Retirement Account,

(1) The Participant's Part A Accrued Benefit shall be expressed as a single life annuity commencing at age 65 (or, if later, the Participant's age on the date of determination); and

(2) The present "Equivalent Actuarial Value" of the Participant's Part A Accrued Benefit under subparagraph 1.28(b)(1) shall be calculated as of the date he commences participation in this Part B, using the Applicable Mortality Table and the following interest rate:

a. If the Participant is an Eligible Part B Employee on January 1, 1998, the yield on 5-year U.S. Treasury Constant Maturities for November, 1997 plus 25 basis points; or

b. If the Participant is not an Eligible Part B Employee on January 1, 1998, the Applicable Interest Rate.

An Employee who was a participant in Part A on December 31, 1997 and who is an Eligible Part B Employee on January 1, 1998 shall have an Initial Retirement Account as of January 1, 1998. Any other participant or former participant in Part A who is not an Eligible Part B Employee on January 1, 1998 shall not have an Initial Retirement Account unless and until he becomes an Eligible Part B Employee after January 1, 1998; provided, however, that a participant or former participant in Part A who becomes an Eligible

Part B Employee after January 1, 1998 shall have his Part A Accrued Benefit converted into an Initial Retirement Account only if so provided in paragraph 2.4(b).

1.29 "Integration Level" shall mean, with respect to section 4.1 for any Plan Year, 50 percent of the contribution and benefit base in effect under Section 230 of the Social Security Act for such Plan Year. Notwithstanding the foregoing, the Integration Level for the 1998 Plan Year shall be $34,000.

1.30 "Interest Credits" shall mean the amounts added to a Participant's Retirement Account under section 4.2.

1.31 "Lincoln" shall mean Lincoln National Corporation or any subsidiary or successor.

1.32 "Minimum Benefit" shall mean, in the case of a Participant who has a Part A Accrued Benefit which is converted into an Initial Retirement Account, the Participant's Part A Accrued Benefit, expressed in the form of a single life annuity commencing at the Participant's Normal Retirement Date. Notwithstanding the foregoing, if:

(a) the Participant survives to his Benefit Commencement Date and has a Spouse as of such Date; and

(b) such Spouse would have been eligible for a Preserved Spouse's Benefit under section 6.4 of Part A, or any successor thereto (as in effect on the later of December 31, 1997 or the date the Participant ceases accruing benefits under Part A), had the Participant been covered by Part A as of his Benefit Commencement Date,

the Participant's Part A Accrued Benefit, expressed in the form of a single life annuity, shall be increased by the Equivalent Actuarial Value of the applicable Preserved Spouse's Benefit.

For purposes of determining a Participant's Minimum Benefit under this section 1.32, if the Actuary estimates any of a Participant's salary history on which his annual primary old age insurance benefit under the Social Security Act is based:

(a) such estimate shall be made in accordance with Revenue Ruling 84-45;

(b) if the Participant supplies documentation of his actual salary history for years previously estimated by the Actuary, his annual primary old age insurance benefit under the Social Security Act based on such actual salary history shall be calculated and the Participant's Minimum Benefit shall be recalculated using such annual primary old age insurance benefit, provided that the Participant must supply such documentation within a reasonable period of time following the later of his severance from employment or the time he is notified of the benefit to which he is entitled; and

(c) except in cases where it is clear that this section 1.32 is not applicable, the Plan Administrator shall provide the Participant with notice of his right to supply actual salary history in accordance with Revenue Ruling 84-45.

1.33 "New Formula Participant" shall mean a participant who was a New Formula Participant

under the provisions of Part A in effect prior to January 1, 1998.

1.34 "Normal Retirement Age" shall mean the later of (a) the time a Participant attains age sixty-five (65); or (b) in the case of a Participant who commences participation in the Plan after attaining age sixty (60), the earlier of the fifth (5th) anniversary of the time a Participant commences participation in the Plan or the date on which the Participant completes five (5) Years of Vesting Service.

1.35 "Normal Retirement Date" shall mean the first day of the month coincident with or next following the date on which a Participant attains his Normal Retirement Age.

1.36 "One-Year Break in Service" shall mean, with respect to any Employee, any Plan Year during which the Employee is credited with 500 or fewer Hours of Service. Solely for purposes of determining whether a One-Year Break in Service has occurred, "Hour of Service" shall also mean, in addition to the hours determined under section 1.26, each hour (up to a maximum of 501 hours in a single continuous period) for which an Employee is absent because of a Parental Absence. The number of Hours of Service credited under this section 1.36 shall be the number of Hours of Service which would otherwise have been credited to such Employee but for such Parental Absence, or, in any case in which such Hours of Service cannot be determined, eight Hours of Service per day of such absence. These hours shall be credited in the Plan Year in which the Parental Absence begins, if the Employee would otherwise incur a One-Year Break in Ser-

vice in such period. In all other cases, these hours shall be credited in the following Plan Year.

1.37 "PEG Plan" shall mean the Pacific Employers Group Pension Plan prior to January 1, 1968 when that plan was merged into the INA Plan.

1.38 "Parental Absence" shall mean any period an Employee is absent from work because of: the Employee's pregnancy, the birth of the Employee's child or the placement of a child with the Employee in connection with the Employee's adoption of the child, or the Employee's caring for the child for a period beginning immediately after the birth or placement; provided that no absence shall be considered to be a Parental Absence unless the Employee shall furnish to the Plan Administrator such timely information as the Plan Administrator may reasonably require to establish that the absence from work was for reasons set forth in this section 1.38 and the number of days for which there was such an absence.

1.39 "Part A" shall mean Part A of the Plan, effective January 1, 1998, and, prior to January 1, 1998, the Plan.

1.40 "Part A Accrued Benefit" shall mean the Participant's accrued benefit under Part A, determined as of the later of December 31, 1997, or the date the Participant ceases accruing benefits under Part A, in accordance with the provisions of Part A as in effect on such date.

1.41 "Part B" shall mean Part B of the Plan as set forth herein and as amended from time to time.

1.42 "Participant" shall mean each Eligible Part B Employee who becomes a Participant in Part B in accordance with Article II and who, at the relevant time, is an Employee; provided that, when appearing without an initial capital letter, "participant" shall refer to an Employee or other individual participating in, or entitled to a benefit under, Part A or Part B of the Plan. A Participant may be in an active or suspended status in Part B.

1.43 "Participating Company" shall mean (a) CIGNA Corporation, (b) each Related Company which is a participating company in Part A as of January 1, 1998, and (c) each other Related Company which has been authorized by the Board of Directors or the People Resources Committee of the Board of Directors (or by a duly authorized officer of CIGNA Corporation) to participate in Part B and which, by resolution of the Related Company's board of directors or by action of an authorized officer of the Related Company, has adopted Part B and has agreed to comply with its provisions.

1.44 "PBGC" shall mean the Pension Benefit Guaranty Corporation, a public corporation within the Department of Labor established pursuant to Title IV of ERISA.

1.45 "Plan" shall mean the CIGNA Pension Plan, a defined benefit pension plan, as set forth in Part A and this Part B, and as amended from time to time.

1.46 "Plan Administrator" shall mean the person, entity, or committee responsible for the administration of the Plan as specified in Article XIII.

1.47 "Plan Year" shall mean the calendar year.

1.48 "Prior Plan or Plans" shall mean the Aetna Plan, the CG Plan, the INA Plan, and the CHP Plan (including any plans previously merged into any of them), collectively or individually as the context may require.

1.49 "Prior Service" shall mean that period of service an individual who was employed by an Acquired Entity on the acquisition date had accumulated as of such date under the provisions of any Acquired Entity qualified pension plan or, if there are no such plans, the period of such individual's employment with the Acquired Entity beginning with the last date that the individual first performed an Hour of Service within the meaning of 29 CFR §2530.200b-2(a)(1) for the Acquired Entity and ending with the acquisition date.

1.50 "Qualified Annuity" shall mean the Qualified Annuity described in paragraph 7.1(a).

1.51 "Qualified Domestic Relations Order" shall mean a qualified domestic relations order as defined in Code Section 414(p).

1.52 "Reemployment Commencement Date" shall mean the first date on which an Employee completes an Hour of Service for CIGNA Corporation or a Related Company following a One-Year Break in Service. The term "Reemployment Commencement Date" shall be applied with respect to any Employee who has had a One-Year Break in Service whether or not such Employee's employment has actually been deemed terminated.

1.53 "Related Company" shall mean any corporation which is a member of a controlled group of corporations, as defined in Code Section 414(b), of which CIGNA Corporation is a member, including an insurance company subject to tax under Code Section 801; any other trade or business which is under common control, as defined in Code Section 414(c), with CIGNA Corporation; any trade or business which is a member of an affiliated service group, as defined in Code Section 414(m), of which CIGNA Corporation is a member; and any other entity required to be aggregated with CIGNA Corporation pursuant to regulations under Code Section 414(o). For purposes of applying Code Section 414(b) and (c) to the limitations on benefits set forth in Article VI, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in Code Section 1563(a)(1).

1.54 "Restatement Date" shall mean January 1, 1998, the date the restated version of Part A and this Part B are effective; however, particular Part B provisions may have other effective dates, as specified herein.

1.55 "Retirement Account" shall mean the sum of a Participant's Initial Retirement Account (if any) plus any Benefit Credits and any Interest Credits received by the Participant under sections 4.1 and 4.2. A Participant's Retirement Account is a bookkeeping account which represents his Accrued Benefit (subject to the provisions of section 1.1); it is not an actual account, and no Plan assets are allocated to it.

1.56 "Retirement Account Annuity Benefit" shall mean a monthly retirement benefit payable at a

Participant's Normal Retirement Date in the form of a single life annuity which is the Equivalent Actuarial Value (determined using the Applicable Interest Rate and Applicable Mortality Table as of the determination date) of the Participant's Retirement Account, increased from the date of determination to the Participant's Normal Retirement Date using the Floor Interest Rate.

1.57 "Spouse" shall mean the lawful marriage partner of a Participant.

1.58 "TEFRA" shall mean the Tax Equity and Fiscal Responsibility Act of 1982.

1.59 "Termination for Cause" shall mean the termination of employment of a Participant by CIGNA Corporation or a Related Company on account of the conviction of the Participant for a felony involving fraud or dishonesty directed against CIGNA Corporation or any Related Company.

1.60 "Trust" shall mean the Trust described in Article XI.

1.61 "Trustee" shall mean the Trustee or Trustees of the Trust established pursuant to this Plan.

1.62 "Year of Credited Service" shall have the meaning set forth in section 3.3.

1.63 "Year of Vesting Service" shall have the meaning set forth in section 3.2.

ARTICLE II - Participation in the Plan

2.1 Commencement of Participation

Each Employee who was a participant in Part A on December 31, 1997 and who is an Eligible Part B Employee on January 1, 1998 shall participate in this Part B, effective January 1, 1998, in accordance with the terms herein. Each other Employee shall become a Participant in Part B on the date following January 1, 1998 that he first completes an Hour of Service as an Eligible Part B Employee.

2.2 Active Participation

Once an Employee becomes a Participant, active participation in Part B continues until suspension, death, or other severance from employment with CIGNA Corporation or a Related Company.

2.3 Suspended Participation

A Participant who remains an Employee but who ceases to be an Eligible Part B Employee shall cease to be an active Participant and shall become a suspended Participant in Part B. The Participant's Hours of Service during the period of suspension shall be counted in determining his Years of Vesting Service but shall not be counted in determining his Years of Credited Service. The Participant's compensation during the period of suspension shall not be considered as Eligible Earnings. The suspension shall end when the suspended Participant again becomes an Eligible Part B Employee, at which time the Par-

ticipant shall resume active participation in Part B, or when the suspended Participant has a severance from employment with CIGNA Corporation and the Related Companies, at which time the suspended Participant shall cease to be a Participant in Part B.

2.4 Participation Upon Reemployment or Transfer After the Restatement Date

(a) Termination under Part B; Reemployment. A Participant in this Part B who terminates employment with CIGNA Corporation or a Related Company after the Restatement Date, and who subsequently is re-employed by a Participating Company as an Eligible Part B Employee, shall resume participation in Part B upon his Reemployment Commencement Date.

(b) Termination or Suspension under Part A; Reemployment or Transfer.

(1) A participant in Part A who terminates employment with CIGNA Corporation or a Related Company either before or after the Restatement Date, and who subsequently is reemployed by a Participating Company as an Eligible Part B Employee after the Restatement Date, shall commence participation in Part B on the date that he first becomes an Eligible Part B Employee. This provision shall apply regardless of whether the participant had commenced receiving a distribution of his Part A Accrual Benefit prior to his reemployment.

(2) A participant in Part A who is a suspended participant on the Restatement Date and who, as a result of a subsequent transfer of employment, becomes an Eligible Part B Employee, shall commence participation in Part B on the date that he first becomes an Eligible Part B Employee.

(3) A former participant in Part A who is described in subparagraph 2.4(b)(1), above shall have his Part A Accrued Benefit converted into an Initial Retirement Account as of the date he commences participation in this Part B, unless the provisions of subparagraph 2.4(b)(4) are applicable.

(4) A former participant in Part A who is described in subparagraph 2.4(b)(1) or (2), above shall not have his Part A Accrued Benefit converted into an Initial Retirement Account if:

a. He has attained age 65; or

b. He received or commenced receiving a distribution of his Part A Accrued Benefit before his Reemployment Commencement Date, unless such distribution was:

1. a deemed distribution of $0, and the Participant's Years of Vesting Service earned under Part A are not disregarded under subparagraph 3.2(c)(2); or

2. an involuntary cash-out with respect to which buy-back rights are attached, and the Participant repays such distribution (plus interest), in accordance with the applicable provisions of Part A in effect at the time he received the distribution, in which event the Participant's Part A Accrued Benefit shall be converted into an Initial Retirement Account at the time he makes such repayment.

Such Participant's Part A Accrued Benefit shall be maintained (in accordance with the applicable provisions of Part A) separately from the benefit he accrues under this Part B following the date that he first becomes an Eligible Part B Employee.

ARTICLE III - Service

3.1 Service - General

Two types of service are used for determining a Participant's benefits under this Part B: Years of Vesting Service and Years of Credited Service. Both types of service are measured under Hours of Service rules.

(a) Years of Vesting Service are used to determine when a Participant has earned a

nonforfeitable right to his Accrued Benefit under the Plan.

(b) Years of Credited Service are used to determine whether a Participant is entitled to Benefit Credits for a Plan Year, and, if so, the amount of the Participant's combined age and service points under section 4.1.

3.2 Years of Vesting Service

(a) With respect to service on and after the Restatement Date, a Participant shall be credited with one Year of Vesting Service for any Plan Year in which he has earned at least 1,000 Hours of Service with CIGNA Corporation or any Related Company, including service in an ineligible class.

(b) With respect to service before the Restatement Date, a Participant shall continue to be credited with the number of Years of Vesting Service with which he was credited on December 31, 1997 under the provisions of Part A in effect on such date.

(c) The determination of an Employee's Years of Vesting Service shall be subject to the following rules:

(1) If an Acquired Entity becomes a Participating Company at any time following the acquisition date, Years of Vesting Service for an individual who was an Employee on the date the Acquired Entity becomes a Participating Company shall also include the

Employee's Prior Service. If the Acquired Entity does not become a Participating Company, the Employee's Years of Vesting Service shall not include the Employee's Prior Service, unless CIGNA Corporation specifically provides that such Prior Service be included as Years of Vesting Service under the Plan. For purposes of this subparagraph 3.2(c)(1), the Plan Administrator shall have sole discretion to determine any Employee's Prior Service.

(2) In the case of an Employee who does not have any vested right to an accrued benefit under the Plan and who incurs a One-Year Break in Service, his Years of Vesting Service (and his Accrued Benefit) prior to such Break shall be disregarded if the number of his consecutive One-Year Breaks in Service equals or exceeds the greater of (A) his aggregate number of Years of Vesting Service prior to such Break (computed by disregarding any Years of Vesting Service which were disregarded under a prior application of this rule), or (B) five (5).

(3) An individual who was an active participant in the Connecticut General Life Field Retirement Plan (and not a participant in Part A) on December 31, 1997, and who became a Lincoln employee on January 1, 1998, shall be credited with the number of Years of Vesting Service with which he

would have been credited as of such date if he had been a participant in Part A prior to the Restatement Date.

(4) Solely for purposes of determining his Years of Vesting Service, an individual who was an active participant in Part A on December 31, 1997, and who became a Lincoln employee on January 1, 1998 shall, so long as he remains employed by Lincoln, continue to receive credit for Hours of Service with Lincoln to the same extent as if he continued to be employed by CIGNA Corporation or a Related Entity. In no event shall this subparagraph 3.2(c)(4) cause an increase in such individual's Years of Credited. Service under Part A or this Part B.

(d) It is intended that an Employee's Years of Vesting Service be counted in the same manner under Part A and this Part B.

3.3 Years of Credited Service

(a) A Participant in this Part B shall be credited with one Year of Credited Service for any Plan Year beginning on or after the Restatement Date in which he has earned at least 1,000 Hours of Service as an Eligible Part B Employee (including any such Hours of Service described in paragraph 1.26(d)).

(b) In addition, for purposes of determining the Participant's combined age and service

points under section 4.1, the following rules shall apply:

(1) A Participant who previously participated in Part A shall be credited with his Years of Credited Service under Part A, determined under the applicable provision of Part A as of the later of December 31, 1997, or the date the Participant ceased accruing benefits under Part A, and disregarding any fraction of a year. In addition,

a. Any Years of Credited Service which are disregarded under the provisions of Part A as a result of an involuntary cash-out of a vested accrued benefit of more than $0 as permitted under Code Section 411(a)(11) shall also be taken into account; and

b. If, after he commences participation in Part B, a Participant first satisfies all of the conditions of subparagraph 3.10(b)(4) of Part A as in effect on December 31, 1997 (or any successor provision of Part A), so that he would be credited with additional Years of Credited Service (up to three Years) under Part A if he were then a participant in Part A, he shall instead be credited with such Years of Credited Service (up to three Years) under this Part B as of such date.

(2) If a Participant receives a lump-sum distribution of his vested Accrued Benefit (or, except as provided in subparagraph 3.3(b)(1), has received a lump sum distribution of his vested Part A Accrued Benefit), and if he subsequently resumes or commences participation in this Part B, his Years of Credited Service with respect to such vested benefit distributed to him shall not be disregarded. (Although repayment of a prior distribution is not required to keep prior Years of Credited Service, a Participant who has received a lump-sum distribution under Part A to which buy back rights are attached shall have the right to repay such distribution (plus interest) in accordance with the applicable provisions of Part A in effect at the time he received. the distribution. Upon such repayment, the Participant's restored Part A Accrued Benefit shall be converted into an Initial Retirement Account, if the Participant is described in subparagraph 2.4(b)(3), or otherwise maintained separately in accordance with the applicable provisions of Part A, if the Participant is described in subparagraph 2.4(b)(4).)

(3) For purposes of determining an Employee's Years of Credited Service, an individual employed by an Acquired Entity on the acquisition date shall not receive credit for Prior Service

unless the Board of Directors specifically provides that such Prior Service be included as Years of Credited Service under the Plan. For purposes of this subparagraph 3.3(b)(3), the Plan Administrator shall have sole discretion to determine any Employee's Prior Service.

(4) An individual who was an active participant in the Connecticut General Life Field Retirement Plan (and not a participant in Part A) on December 31, 1997, who became a Lincoln employee on January 1, 1998, and who subsequently becomes an Eligible Part B Employee, shall be credited with the number of whole Years of Credited Service with which he would have been credited as of December 31, 1997 under the applicable provisions of Part A (disregarding any fraction of a year), if he had been eligible to participate in Part A prior to the Restatement Date. In no event shall any credit be given under this subparagraph 3.3(b)(4) for any service with Lincoln.

3.4 Leaves of Absence

An Employee is considered to remain employed by CIGNA Corporation or a Related Company while he is on a leave of absence which has been approved by CIGNA Corporation or the Related Company, as appropriate. The date that an Employee's leave of absence ends shall be determined in accor-

dance with the personnel policies of CIGNA Corporation or the Related Company, as appropriate, which ending date shall be no earlier than the date that the leave of absence is scheduled to end unless the Employee communicates to CIGNA Corporation or the Related Company, as appropriate, that he has terminated employment as of an earlier date.

3.5 Qualified Military Service

Service credit with respect to qualified military service shall be provided in accordance with section 15.10.

ARTICLE IV - Benefit Credits And Interest Credits

4.1 Benefit Credits

(a) In General. For each Plan Year beginning on and after the Restatement Date in which a Participant completes a Year of Credited Service, his Retirement Account shall be increased by a Benefit Credit. Such Benefit Credit shall be a percentage of his Eligible Earnings received from the Participating Companies for the Plan Year, determined under the following table:

Combined Age and Service Points	Benefit Credit	
	Percentage Applied to Eligible Earnings not in excess of Integration Level for Plan Year	Percentage Applied to Eligible Earnings in excess of Integration Level for Plan Year
Under 35	3%	4.5%
35-44	4%	5.5%
45-54	5%	6.5%
55-64	6%	7.5%
65 or over	7%	8.5%

A Participant's combined age and service points shall equal the sum of the Participant's years of age (disregarding any fraction of a year) and whole Years of Credited Service (disregarding any fraction of a year) as of January 1 of the Plan Year for which such Benefit Credit is made.

(b) Year of Retirement, Death or Termination. A Participant shall receive a Benefit Credit for the Plan Year in which he dies, retires or terminates employment, provided that he completes a Year of Credited Service during such Plan Year prior to the date of his death, retirement or termination. The amount of such Benefit Credit shall be determined under paragraph 4.1(a), based upon the Participant's Eligible Earnings as of the date of his death, retirement or termination (whichever is applicable).

(c) Transfers from Covered Employment

(1) General Rule. If a Participant transfers from employment as an Eligible Part B Employee to other employment with a Participating Company or a Related Company, he shall become a suspended Participant, and he shall not accrue any additional benefits under this Part B, except as provided in subparagraph 4.1(c)(2). However, his Retirement Account shall continue to receive Interest Credits, as provided in section 4.2, until his Benefit Commencement Date. In addition, his Hours of Service after the transfer shall be taken into account, in accordance with section 3.2, in determining his Years of Vesting Service under the Plan.

(2) Year of Transfer. If, during a Plan Year, a Participant transfers from employment as an Eligible Part B Employee to other employment with a Participating Company or a Related Company, only his Hours of Service during such Plan Year before the transfer shall be taken into account in determining whether he has completed a Year of Credited Service for purposes of paragraph 4.1(a), and only his Eligible Earnings before the transfer shall be taken into account in determining the amount of his

Benefit Credit under this Part B, if any, for such Plan Year.

(d) Transfers to Covered Employment. If an Employee transfers from other employment with a Participating Company or a Related Company to employment as an Eligible Part B Employee, his service prior to the transfer shall be taken into account, in accordance with section 3.2. for purposes of vesting, but not for benefit accrual. For the Plan Year in which the transfer to covered employment occurs, only his Hours of Service after the transfer shall be taken into account in determining if he has completed a Year of Credited Service for purposes of paragraph 4.1(a), and only his Eligible Earnings after the transfer shall be taken into account in determining the amount of his Benefit Credit under this Part B, if any, for such Plan Year.

4.2 Interest Credits

(a) In General.

(1) For each calendar quarter beginning on and after the Restatement Date, each Participant's Retirement Account shall be increased by an Interest Credit. A Participant's Retirement Account shall continue to receive Interest Credits until the end of the month preceding the Participant's Benefit Commencement Date (or until such amount is forfeited under paragraph 5.1(f), regardless of whether he continues in the employ

of a Participating Company or a Related Company.

(2) The amount of the Interest Credit for any calendar quarter in a Plan Year shall be determined by applying the interest rate prescribed by paragraph 4.2(b) to the Participant's Retirement Account as of the last day of such calendar quarter.

(3) For purposes of this section 4.2, a Participant's Benefit Credit for any Plan Year shall be deemed to be made on a quarterly basis during such Year, based on the Participant's Eligible Earnings for each calendar quarter (determined as of the last payroll date of such calendar quarter). Such Benefit Credit for any calendar quarter shall be deemed to be made after the Interest Credit for the same quarter.

(4) Nothing in this section 4.2 shall be construed to modify the provisions of section 4.1 or otherwise give a Participant any right to a Benefit Credit (or Interest Credits with respect to such Benefit Credit) except as provided in section 4.1. A Participant shall not be entitled to any deemed quarterly Benefit Credits for a Plan Year (or any Interest Credits with respect thereto) unless he completes a Year of Credited Service in such Plan Year.

(b) Interest Rate. For purposes of paragraph 4.2(a), the interest rate for each calendar quarter in any Plan Year shall be the rate that yields an annual rate equal to the greater of:

(1) Four and one-half percent (the Floor Interest Rate), or

(2) The lesser of nine percent, or the yield on 5-year U.S. Treasury Constant Maturities for the month of November of the preceding Plan Year plus 25 basis points.

(c) Year of Distribution. If a Participant's Benefit Commencement Date occurs on a date other than the first day of a calendar quarter, his Interest Credit for the calendar quarter in which such Benefit Commencement Date occurs shall be calculated in accordance with paragraphs 4.2(a) and (b) for the period from the beginning of the calendar quarter to the end of the month preceding his Benefit Commencement Date.

ARTICLE V - Payment of Benefits

5.1 Vesting of Benefits

(a) A Participant's Accrued Benefit shall be fully vested on the date he attains Normal Retirement Age, provided he is an Employee on that date.

(b) The Accrued Benefit of a Participant who has not attained Normal Retirement Age shall be fully vested upon his completion of five (5) Years of Vesting Service.

(c) A Participant who was a participant in the Aetna Plan or CG Plan on December 31, 1982, and who has a severance from employment at the end of any month after he attains age sixty-five (65) shall be fully vested whether or not he has completed five (5) Years of Vesting Service.

(d) In no event may a Participant's vested Accrued Benefit be divested for cause.

(e) A Participant who has a severance from employment with CIGNA Corporation or a Related Company and who has no vesting at that time shall be deemed to receive a lump sum distribution in the amount of $0 under section 5.4, and shall forfeit all benefits under the Plan, except any benefits derived from Required Employee Contributions (as defined in paragraph 10.1(b)), as of the first day of the month following the date of such severance from employment. If such non-vested Participant subsequently resumes employment as an Eligible Part B Employee before he has incurred five consecutive One-Year Breaks in Service, his forfeited Accrual Benefit shall be restored as of the date he resumes participation in Part B, without Interest Credits for the period extending from the date of forfeiture to the date of such restoration.

(f) An Employee who does not have any vested right to an accrued benefit under the Plan and whose Years of Vesting Service prior to a series of One-Year Breaks in Service are disregarded under subpara-

graph 3.2(c)(2), shall forfeit all benefits accrued under the Plan prior to such Break, except any benefits derived from Required Employee Contributions (as defined in paragraph 10.1(b)), as of the date such Years of Vesting Service are disregarded under subparagraph 3.2(c)(2).

5.2 Normal Retirement Benefits

(a) A Participant's normal retirement benefit shall be his Accrued Benefit at his Normal Retirement Date. Notwithstanding the foregoing, the amount of the Participant's normal retirement benefit, expressed in the form of a single life annuity, shall in no event be less than the greatest early retirement benefit he could have received if he had elected to retire and commence receiving his vested Accrued Benefit in the form of a single life annuity prior to his Normal Retirement Date. (This provision is intended to comply with Treas. Reg. §1.411(a)-7(c), and shall have no application except as required by that regulation.)

(b) A Participant may retire on his Normal Retirement Date. If a Participant retires on his Normal Retirement Date, he shall be entitled to receive, or commence receiving, his normal retirement benefit in one of the forms of payment described in Article VII as of such date.

(c) If a Participant continues in the service of a Participating Company as an Eligible Part B Employee after his Normal Retirement Date, he shall continue to participate in Part B and shall continue to receive

credit for purposes of benefit accrual for his Years of Credited Service and for his Eligible Earnings, subject to the provisions of Part B, until he actually retires.

5.3 Termination Benefits

A Participant who is vested under section 5.1 and who has a severance from employment with CIGNA Corporation and all Related Companies for reasons other than death or normal retirement under section 5.2 shall be entitled to receive, or commence receiving, his Accrued Benefit in one of the forms of payment described in Article VII as of his Normal Retirement Date. Alternatively, he may elect to receive, or commence receiving, his Accrued Benefit in one of the forms of payment described in Article VII as of the first day of the second month (or any later month) after his severance from employment which is prior to his Normal Retirement Date.

5.4 Cash-Out of Small Benefits

Notwithstanding any other provisions of the Plan, if a Participant has a severance from employment with CIGNA Corporation and all Related Companies for any reason other than death, and if, as of the Benefit Commencement Date, his vested Accrued Benefit does not exceed $5,000, the Plan Administrator shall cause such entire vested Accrued Benefit to be distributed to the Participant in a lump sum distribution. Such distribution shall be made as soon as practicable following the Participant's severance from employment, but not later than the last day of

the Plan Year following the Plan Year in which such severance occurs. A Participant who has no vested interest in his Accrued Benefit at the time of his severance from employment shall be deemed to receive a lump sum distribution in the amount of $0 under this section 5.4 as of the first day of the month following the date of such severance from employment.

5.5 Consent to Distribution

Except as otherwise provided in section 5.4, no amount shall be distributed to the Participant under this Article V until he has attained his Normal Retirement Age unless he consents in writing to such earlier distribution. Prior to the commencement of any distribution requiring such written consent, the Plan Administrator shall provide the Participant with a written notice of his right to defer receipt of the payment until his Normal Retirement Age, as required under Treas. Reg. §1.411(a)-11(c). Such notice shall be provided not more than 90 days and no less than 30 days prior to the Participant's Benefit Commencement Date except as otherwise provided in section 7.1.

5.6 Sale of Assets or a Subsidiary

(a) In the event of a sale by CIGNA Corporation or a Related Company ("Seller") to an unaffiliated purchaser of either (1) all or substantially all of the assets used by a Participating Company in a trade or business or (2) all of the Seller's interest in a subsidiary, a severance from employment will occur on the date of such sale with re-

spect to any Employee who continues in employment with the corporation or other person acquiring such assets or with such subsidiary, as the case may be. Such Employees shall be referred to herein as "Severed Employees."

(b) Paragraph 5.6(a) shall not apply to any Severed Employee if, in connection with the sale, the purchaser agrees (1) to be substituted for CIGNA Corporation as the sponsor of the Plan, or any part thereof in which the Severed Employee participates, or (2) to establish a defined benefit pension plan qualified under Code Section 401(a) to which Plan assets and liabilities related to the Severed Employee will be transferred, or (3) to accept a transfer to an existing defined benefit pension plan maintained by the purchaser and qualified under Code Section 401(a) of Plan assets and liabilities related to the Severed Employee.

(c) Paragraph 5.6(a) shall not apply to any sale in which the purchaser is a Related Company.

(d) Paragraph 5.6(a) shall not apply unless the Plan continues to be maintained by CIGNA Corporation following such sale.

5.7 General Payment Provisions

(a) A Participant's vested Accrued Benefit shall be payable as of his Benefit Commencement Date, and payment thereof shall begin as soon as practicable after such Benefit Commencement Date as provided in this Article V. Payment of benefits shall commence not later than the

time provided in section 7.5, unless paragraph 5.7(c) or 5.7(d) applies.

(b) To receive Part B benefits, the Participant must apply for such benefits by giving the Plan Administrator a request for payment of benefits using forms and procedures approved by the Plan Administrator. The request must be submitted within such time period as the Plan Administrator shall specify prior to the date that the Participant intends to have his benefits begin.

(c) The Plan Administrator shall make reasonable efforts to locate each Participant, former Participant or Beneficiary who is entitled to benefits under Part B and to obtain from such individual information, including his marital status, necessary to determine the amount of any benefits payable to him. If the Plan Administrator is unable to locate an individual to whom benefits are payable under Part B or is unable to obtain information necessary to determine the amount of his benefits, the Plan Administrator may, notwithstanding any other provision of this Article V, defer payment of such benefits until the individual is located or the necessary information is obtained. Payment of these Part B benefits shall then commence within sixty (60) days following the date that the individual is located or the necessary information is obtained.

(d) If the Plan Administrator is unable to locate a Participant (or his Beneficiary) within a reasonable period of time and

prior to the date that applicable state law requires escheat, the Participant's (or Beneficiary's) benefits may be forfeited. If the Plan Administrator is able subsequently to locate the Participant (or his Beneficiary), the forfeited benefits will be reinstated and payment commenced according to applicable sections of this Article V within sixty (60) days after the Participant (or his Beneficiary) is located.

(e) Any periodic benefit payments for the life of a Participant or other payee shall be in monthly installments and shall continue through the monthly payment for the month during which the Participant or other payee dies. The first monthly payment of a Participant's periodic retirement benefits shall also include those monthly retirement benefits (if any) delayed for the period from the Benefit Commencement Date until the date that payment of benefits actually begins.

ARTICLE VI - Maximum Retirement Benefits

6.1 Statutory Maximum Retirement Benefit Limitations

(Certain definitions applicable to this section 6.1 are in section 6.3.)

(a) Maximum Pension Benefit. Regardless of any other provision of this Plan, the Annual Benefit to which a Participant is entitled at any time under the Plan shall not, during a Limitation Year, exceed the lesser of:

(1) The Defined Benefit Dollar Limitation for such Limitation Year; or

(2) 100% of the Participant's average Limitation Compensation for the three (3) consecutive calendar years during which he both participated in the Plan and received his greatest aggregate Limitation Compensation from CIGNA Corporation and all Related Companies.

(b) Adjustment for Early Retirement. If the retirement benefit of a Participant commences before his Social Security Retirement Age, and on or after age 62, the limitation in subparagraph 6.1(a)(1) shall be reduced by 5/9 of one percent for each of the first 36 months and 5/12 of one percent for each of the additional months by which benefits commence before the month in which the Participant attains his Social Security Retirement Age. If the retirement benefit of a Participant commences before the Participant attains age 62, the limitation in subparagraph 6.1(a)(1) at age 62 (as calculated under the preceding sentence) shall be adjusted so that it is the actuarial equivalent of the limitation in subparagraph 6.1(a)(1) at age 62. For purposes of this paragraph 6.1(b), the reduced age-adjusted limitation in subparagraph 6.1(a)(1) that is the actuarial equivalent of such limitation at age 62 shall be the lesser of the equivalent amount using the mortality table and interest rate specified in section 1.21, and the equivalent amount

using an interest rate of 5% and no mortality decrement.

(c) Adjustment for Deferred Retirement. If the retirement benefit of a Participant commences after the Participant's Social Security Retirement Age, the limitation in subparagraph 6.1(a)(1) shall be increased so that it is the actuarial equivalent of an annual benefit equal to the dollar limit set forth in subparagraph 6.1(a)(1) beginning at the Participant's Social Security Retirement Age. For purposes of this paragraph 6.1(c), the increased age-adjusted limitation in subparagraph 6.1(a)(1) that is the actuarial equivalent of such limitation shall be the lesser of the equivalent amount using the mortality table and interest rate specified in section 1.21, and the equivalent amount using an interest rate of 5% and no mortality decrement.

(d) Adjustment of Limitation for Years of Service or Participation

(1) If a Participant has completed fewer than ten (10) years of Plan participation, the limitation set forth in subparagraph 6.1(a)(1) shall be reduced by multiplying it by a fraction, the numerator of which is the Participant's number of years (or part thereof) of participation in the Plan, and the denominator of which is ten (10) years.

(2) If a Participant has completed fewer than ten (10) years of service with CIGNA Corporation and Related

Companies, the limitations set forth in subparagraph 6.1(a)(1) and paragraph 6.1(e) shall be reduced by multiplying such amounts by a fraction, the numerator of which is the Participant's number of years of service (or part thereof), and the denominator of which is ten (10) years.

(3) In no event shall subparagraphs 6.1(d)(1) and (2) reduce the limitations provided under subparagraphs 6.1(a)(1) and paragraph 6.1(e) to an amount less than one-tenth (1/10) of the applicable limitation (as determined without regard to this paragraph 6.1(d)).

(e) Total Annual Benefits Not in Excess of $10,000. Notwithstanding the foregoing provisions of this section 6.1, the benefits payable with respect to a Participant under this Plan shall be deemed not to exceed the limitations of section 6.1 if:

(1) the benefits payable with respect to such Participant under this Plan and all other defined benefit plans maintained by CIGNA Corporation and Related Companies do not exceed $10,000 for the Limitation Year, or for any prior Limitation Year; and

(2) CIGNA Corporation and Related Companies have not at any time maintained a defined contribution plan in which the Participant participated.

(f) Transition Rules.

(1) Preservation of Current Accrued Benefit as of 12/31/86. If the Current Accrued Benefit of an individual who is a Participant as of the first day of the Limitation Year beginning on January 1, 1987, exceeds the benefit limitations under Code Section 415(b) (as modified by paragraphs 6.1(b) and (c)), then, for purposes of Code Section 415(b) and (e), the Defined Benefit Dollar Limitation with respect to such individual shall be equal to such Current Accrued Benefit. This provision shall apply provided that the Plan met the applicable requirements of Code Section 415 as in effect for all Limitation Years.

(2) TEFRA Transition Rule. In the case of a Participant who participated in the Plan prior to January 1, 1983, the transition rule set forth in Section 235(g)(4) of TEFRA shall apply for purposes of this section 6.1.

(g) Preservation of Accrued Benefits as of 12/31/94. The provisions of this Article VI shall not cause a Participant's Accrued Benefit, as adjusted for his Benefit Commencement Date and optional form of payment, to be less than his protected accrued benefit as of December 31, 1994. Such protected accrued benefit is the Participant's accrued benefit under the terms of the Plan as of December 31, 1994, as ad-

justed for his Benefit Commencement Date and optional form of payment and taking into account the limitations of Code Section 415 applicable on December 31, 1994. For purposes of determining a Participant's protected accrued benefit, any Plan amendments increasing benefits that are adopted after December 31, 1994, and any cost of living adjustments under Code Section 415(d) that become effective after such date, shall be disregarded.

6.2 Participation in One or More Defined Contribution Plans

In any case in which an individual has at any time participated in this Plan and has also participated in any defined contribution plan qualified under Code Section 401(a) maintained by CIGNA Corporation or a Related Company, the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction with respect to that Participant for any Limitation year shall not exceed 1.0. If the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction with respect to any Participant for any Limitation Year would otherwise exceed 1.0, the Annual Benefit payable under this Plan shall be reduced to the extent necessary to comply with such 1.0 limit. Notwithstanding the foregoing, this section 6.2 shall not apply with respect to any Limitation Year beginning after December 31, 1999.

6.3 Definitions Applicable to Sections 6.1 and 6.2

The following definitions shall apply for purposes of sections 6.1 and 6.2:

(a) "Annual Benefit" shall mean the benefit payable annually under this Plan in the form of a straight life annuity (with no ancillary benefits), within the meaning of Code Section 415(b)(2). Except as provided herein, a Participant's retirement benefit under the Plan shall, for purposes of applying the limitations of this Article VI, be adjusted to a straight life annuity beginning at the same age which is the actuarial equivalent of such benefit in accordance with rules determined by the Commissioner of Internal Revenue. For purposes of making the foregoing adjustment to a straight life annuity, there shall not be taken into account the value of a qualified joint and survivor annuity provided under the Plan to the extent that such value exceeds the sum of (A) the value of a straight life annuity beginning on the same date and (B) the value of any post-retirement death benefits which would be payable even if the annuity were not in the form of a joint and survivor annuity.

For purposes of this paragraph 6.3(a), the annual benefit in the form of a straight life annuity commencing at the same age that is actuarially equivalent to the Plan benefit shall be the greater of the equivalent annual benefit computed using the mortality table and interest rate specified in section 1.21, and the equivalent annual benefit computed using the Applicable Mortality Table and an interest rate of 5% (or, in the case of a benefit in a form that

is subject to Code Section 417(e)(3), the Applicable Interest Rate).

(b) "Current Accrued Benefit" shall mean a Participant's accrued benefit under the Plan, determined as if the Participant had separated from service as of the close of the last Limitation Year beginning before January 1, 1987, when expressed as an Annual Benefit within the meaning of Code Section 415(b)(2). In determining the amount of a Participant's Current Accrued Benefit, the following shall be disregarded:

(1) any change in the terms and conditions of the Plan (including Prior Plans) after May 5, 1986; and

(2) any cost of living adjustment occurring after May 5, 1986.

(c) "Defined Benefit Dollar Limitation" shall mean the limitation set forth in Code Section 415(b)(1)(A) multiplied by the Adjustment Factor.

(d) "Defined Benefit Plan Fraction" shall mean, for any Limitation Year, a fraction, the numerator of which is the sum of the Participant's projected Annual Benefit under the Plan (determined as of the end of the Limitation Year), and the denominator of which is the lesser of:

(1) The product of 1.25, multiplied by the Defined Benefit Dollar Limitation in effect for such Limitation Year; or

(2) The product of 1.40, multiplied by the amount which may be taken into ac-

count under subparagraph 6.1(a)(2) with respect to such Participant for such Limitation Year.

For purposes of this paragraph 6.3(d), a Participant's projected Annual Benefit shall be calculated under the Plan on the assumption that he remains in service of a Participating Company until his Normal Retirement Age (or his current age, if that is later), that his compensation continues at the same rate as in the Limitation Year the projection is being made, and that all other factors used to determine benefits under the Plan remain the same as in the Limitation Year the projection is being made. If the Participant's projected number of years of service at his Normal Retirement Age is less than ten (10), the denominator of the Defined Benefit Plan Fraction shall be adjusted by multiplying such denominator by a fraction, the numerator of which is such projected number of years and the denominator of which is ten (10).

TEFRA Transition Rule. In the case of a Participant who participated in this Plan (including any Prior Plan) prior to January 1, 1983, the transition rule set forth in Section 235(g)(4) of TEFRA shall be applied in determining the Defined Benefit Plan Fraction.

(e) "Defined Contribution Dollar Limitation" shall mean $30,000, multiplied by the Adjustment Factor.

(f) "Defined Contribution Plan Fraction" shall mean, for the Limitation Year, a fraction, the numerator of which is the sum of the Annual Additions to the Participant's account under any defined contribution plan maintained by CIGNA Corporation or a Related Company for such Limitation Year and all prior Limitation Years (including the Annual Additions attributable to the Participant's non-deductible employee contributions to this and all other defined benefit plans maintained by CIGNA Corporation or a Related Company), and the denominator of which is the sum of the lesser of the following amounts, determined for such Limitation Year and for each prior year of employment with CIGNA Corporation or a Participating Company:

(1) The product of 1.25, multiplied by the Defined Contribution Dollar Limitation in effect for such Limitation Year; or

(2) Thirty-five percent (35%) of the Participant's Limitation Compensation for such Year.

For purposes of computing the Defined Contribution Plan Fraction, "Annual Additions" shall mean the amount allocated to a Participant's account during the Limitation Year as a result of:

(1) Employer contributions (other than excess deferrals distributed in accordance with Treasury Regulations Section 1.402(g)-1(e)(2) or (3));

(2) Employee contributions;

(3) Forfeitures; and

(4) Amounts described in Code Sections 415(l)(1) and 419A(d)(2).

The Annual Addition for any Limitation Year beginning before January 1, 1987 shall not be recomputed to treat all employee contributions as an Annual Addition.

Adjustment of Defined Contribution Plan Fraction. If the Plan satisfied the applicable requirements of Code Section 415 as in effect for all Limitation Years beginning before January 1, 1987, an amount shall be subtracted from the numerator of the Defined Contribution Plan Fraction (not exceeding such numerator) as prescribed by the Secretary of the Treasury so that the sum of the Defined Benefit Plan Fraction and Defined Contribution Plan Fraction computed under Code Section 415(e)(1) does not exceed 1.0 for such Limitation Year.

TEFRA Transition Rule. If the sum of the Defined Benefit and Defined Contribution Plan Fractions of a Participant for the 1982 Limitation Year would otherwise exceed 1.0, the Participant's Defined Contribution Plan

Fraction shall be adjusted by permanently subtracting from the numerator an amount determined in accordance with regulations prescribed under Section 235(g)(3) of TEFRA, so that such sum does not exceed 1.0 for such Limitation Year; provided, however, that this adjustment may be made only if the plans satisfied the requirements of Code Section 415 for such Limitation Year.

(g) "Limitation Compensation" shall mean wages within the meaning of Code Section 3401(a) and all other payments of compensation to an Employee by a Participating Company or Related Company (in the course of the trade or business of the Participating Company or Related Company) for which the Participating Company or Related Company is required to furnish the Employee a written statement under Code Section 6041(d), Section 6051(a)(3), and Section 6052 determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed. For Limitation Years beginning after December 31, 1997, "Limitation Compensation" shall also include (i) any elective deferral (as defined in Code Section 402(g)(3)), and (ii) any amount which is contributed by the Participating Company or a Related Company at the election of the Employee and which is not includ-

ible in the gross income of the Employee by reason of Code Section 125.

(h) "Limitation Year" shall mean the calendar year.

(i) "Social Security Retirement Age" shall mean the age used as the retirement age under Section 216(l) of the Social Security Act, except such Section shall be applied (1) without regard to the age increase factor, and (2) as if the early retirement age under Section 216(l)(2) of such Act were sixty-two (62).

6.4 Aggregation Rules

For purposes of applying the limitations of sections 6.1 and 6.2 applicable to a Participant for a particula Limitation Year:

(a) All tax-qualified defined benefit plans maintained by CIGNA Corporation shall be treated as one defined benefit plan; and all tax-qualified defined contribution plans maintained by CIGNA Corporation shall be treated as one defined contribution plan; and

(b) Any tax-qualified defined benefit plan or tax-qualified defined contribution plan maintained by any Related Company shall be deemed to be maintained by CIGNA Corporation.

6.5 Discrepancy With Code

The limitations set forth in Article VI are intended to comply with the provisions of Code Section 415 and any regulations issued pursuant thereto, so that the maximum retirement benefit shall be exactly equal to the

maximum amount permitted pursuant thereto. Should there be any discrepancy between the provisions of Article VI and those of Code Section 415 and any regulations issued pursuant thereto, such discrepancy shall be resolved by giving full effect to the provisions of said Section 415 and any regulations issued pursuant thereto, while in effect.

ARTICLE VII - Forms of Benefits; Distribution Requirements

7.1 Qualified Annuity

(a) General Rule. Unless the election provided in paragraph 7.1(b) has been made, the benefits described in this Part B shall be paid in the form of a Qualified Annuity with respect to any Participant who receives benefit payments under this Part B.

(1) A Qualified Annuity for an unmarried Participant means a single life annuity for the life of the Participant which is of Equivalent Actuarial Value (determined using the Applicable Interest Rate and the Applicable Mortality Table) to the Participant's Accrued Benefit.

(2) A Qualified Annuity for a married Participant means an annuity for the life of the Participant, with a survivor annuity for the life of his Spouse. The survivor annuity shall be 50% of the amount of the annuity payable during the joint lives of the Partici-

pant and his Spouse. Alternatively, the Participant may elect, during the election period described in paragraph 7.1(c), that the survivor annuity shall be 100% of the amount of the annuity payable during the joint lives of the Participant and his Spouse. The joint and survivor annuity shall in any case be of Equivalent Actuarial Value to the annuity described in subparagraph 7.1(a)(1). If, pursuant to a Qualified Domestic Relations Order, more than one individual is a designated spouse, the amount of the survivor pension payable under this subparagraph 7.1(a)(2) shall not exceed the amount that would be paid if there were only one surviving Spouse.

(b) Election Not to Receive Qualified Annuity. A Participant may elect, within the period described in paragraph 7.1(c), and subject to the restrictions on such election provided in paragraph 7.1(d), not to receive his benefit in the form of a Qualified Annuity, and instead to receive his benefit in one of the optional forms described in section 7.2. The Plan Administrator shall provide to each Participant, no more than ninety (90) days and, except as provided in paragraph 7.1(c), no less than thirty (30) days prior to his Benefit Commencement Date, a written explanation of:

(1) The terms and conditions of a Qualified Annuity, including a general description of the eligibility conditions

and other material features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit available under the Plan;

(2) The Participant's right to make, and the effect of, an election to waive a Qualified Annuity;

(3) The rights of a Participant's Spouse (if the Participant is married); and

(4) The Participant's right to make, and the effect of, a revocation of a previous election to waive a Qualified Annuity.

(c) Election Period. A Participant's written election (and his spouse's consent, if applicable) under this section 7.1 must be made not more than 90 days before his Benefit Commencement Date. In addition, a Participant has a right to at least 30 days to consider such election, and, if applicable, a consent to an immediate distribution under section 5.5. However, a Participant's Benefit Commencement Date may be less than 30 days after the written explanation described in paragraph 7.1(b) and, if applicable, the notice described in section 5.5 (collectively, the "Required Distribution Information") was given to the Participant, provided that the following requirements are met:

(1) The Plan Administrator clearly informs the Participant that he has a right to a period of at least 30 days after receiving the Required Distri-

bution Information to consider whether to waive the Qualified Annuity and elect a form of distribution other than the Qualified Annuity, and, if applicable, to consider whether to commence receipt of his benefit before his Normal Retirement Date;

(2) After receiving the Required Distribution Information, the Participant affirmatively elects a form of distribution (with spousal consent, if required), and, if applicable, the Participant affirmatively elects to commence receiving distribution of his benefit;

(3) The Participant is permitted to revoke his affirmative election at least until his Benefit Commencement Date, or, if later, at any time prior to the expiration of the seven-day period that begins the day after the Required Distribution Information is provided to the Participant;

(4) The Participant's Benefit Commencement Date is after the date that the Required Distribution Information is provided to the Participant, except as otherwise permitted under Code Section 417(a)(7), or any Treasury regulation issued thereunder; and

(5) Distribution in accordance with the Participant's affirmative election does not begin before the expiration

of the seven-day period that begins on the day after the Required Distribution Information is provided to the Participant.

(d) Requirement of Spousal Consent. Any election under this section 7.1 which results in a married Participant's waiver of the Qualified Annuity must be in writing and must be consented to by the Participant's Spouse. The Spouse's consent to a waiver must be witnessed by a notary public, must be irrevocable, must be limited to a benefit for a specific alternate beneficiary (or a single life annuity for the life of the Participant), and must specify the particular optional form of benefit elected by the Participant. Notwithstanding the spousal consent requirement, if the Participant establishes to the satisfaction of the Plan Administrator or other Plan representative that such written consent may not be obtained because there is no Spouse or because the Participant's Spouse cannot be located, the waiver shall be deemed a permissible election. If the Spouse is legally incompetent to give consent, the Spouse's legal guardian may give consent, even if such guardian is the Participant. Also, if the Participant is legally separated or has been abandoned (within the meaning of local law) and the Participant has a court order to such effect, spousal consent is not required unless a Qualified Domestic Relations Order provides otherwise. Any consent necessary under this provision shall be valid only with respect to the

spouse who signs the consent, or, in the event of a deemed permissible election, the designated spouse (if any). Additionally, a Participant may revoke a prior waiver without the consent of his Spouse at any time before his Benefit Commencement Date. The number of revocations shall not be limited. Any new waiver or change of the terms of a specific consent will require a new spousal consent.

7.2 Optional Forms of Retirement Benefits

(a) Subject to requirements of section 7.1, a Participant may elect to receive his vested Accrued Benefit in any of the following optional forms of payment:

(1) A lump-sum distribution.

(2) A single life annuity described in subparagraph 7.1(a)(1), if the Participant would otherwise receive the Qualified Annuity form provided in subparagraph 7.1(a)(2).

(3) An annuity for the life of the Participant, with a contingent survivor annuity for the life of the person designated by the Participant as contingent survivor. The contingent survivor annuity form of payment described in this subparagraph 7.2(a)(3) shall be of Equivalent Actuarial Value to the single life annuity described in subparagraph 7.1(a)(1). Subject to section 7.5, the survivor annuity for the life of the contingent survivor provided under this optional form of payment shall be fifty percent

(50%) or one hundred percent (100%) of the benefit payable during the Participant's lifetime, as the Participant shall elect.

Each Participant who elects a contingent survivor annuity form of payment shall at the time of such election designate on forms provided by the Plan Administrator a contingent survivor to receive the survivor benefits provided. Subject to the requirements of section 7.1, the Participant may, at any time prior to his Benefit Commencement Date, revoke such designation or substitute another such contingent survivor. A Participant's designation of contingent survivor shall automatically become void if such contingent survivor dies before the Participant's Benefit Commencement Date. A Participant's designation of his contingent survivor shall become irrevocable on his Benefit Commencement Date.

(4) A single life annuity for the life of the Participant, with a lump-sum refund payable to the Participant's Beneficiary, such refund to be equal to the excess, if any, of (A) over (B) below, where:

a. is the Participant's Accrued Benefit on the Participant's Benefit Commencement Date, and

b. is the sum of annuity payments made to the Participant.

The single life annuity with cash refund described in this subparagraph 7.2(a)(4) shall be of Equivalent Actuarial Value to the single life annuity described in subparagraph 7.1(a)(1).

(5) In the case of a Participant who, on August 1, 1981, was an employee of the Ross-Loos Medical Group, Inc. and eligible to participate in the Ross-Loos Medical Group, Inc. Defined Benefit Pension Plan (a predecessor of the CHP Plan), either of the following optional forms:

a. An annuity for the life of the Participant, with 120 payments certain, so that if the Participant dies before 120 monthly payments have been made, the remaining guaranteed monthly payments will be paid to the Participant's Beneficiary; or

b. An installment annuity guaranteed to be payable for 120 months.

The forms of benefit described in this subparagraph 7.2(a)(5) shall be of Equivalent Actuarial Value to the annuity described in subparagraph 7.1(a)(1).

(b) Subject to the requirements of section 7.1, the Participant may at any time during the election period described in paragraph 7.1(c) elect in writing not to receive his

benefit in the Qualified Annuity form, elect one of the optional forms of benefits described in this section 7.2, and make any of the other elections provided in this Article VII. The Participant may also at any time during such election period revoke in writing a previous election. The notice of such an election or revocation must be filed in writing with the Plan Administrator and the Plan Administrator shall provide a form for such elections or revocations. A Participant's election or revocation of an election under this section 7.2 shall become effective on his Benefit Commencement Date, except to the extent otherwise provided in subparagraph 7.1(c)(3).

7.3 Special Provisions for Participants with Initial Retirement Accounts

(a) This section 7.3 shall apply with respect to a Participant who:

(1) has a Part A Accrued Benefit which has been converted into an Initial Retirement Account;

(2) is vested under section 5.1;

(3) has a severance from employment with CIGNA Corporation and all Related Companies for a reason other than death; and

(4) elects to receive his Accrued Benefit in an annuity form provided under section 7.1 or 7.2.

(b) The payments under this Part B to a Participant described in paragraph 7.3(a) in

the annuity form he has elected shall in no event be less than the Equivalent Actuarial Value of his Minimum Benefit expressed in the form of a single life annuity commencing as of his Benefit Commencement Date. For purposes of this paragraph 7.3(b), if the Participant's Benefit Commencement Date is prior to his Normal Retirement Date and on or after the date he would have been eligible to commence receiving early retirement or termination benefits under Part A, the amount of his Minimum Benefit payable in the form of a single life annuity as of his Benefit Commencement Date shall be determined (1) using the applicable early commencement reduction factors under Part A (based on his age and Years of Vesting Service as of his Benefit Commencement Date), and (2) increasing such single life annuity by the Equivalent Actuarial Value of any Social Security supplement which would have been payable under Part A with respect to the Participant's Minimum Benefit.

(c) This section 7.3 shall not apply to any Participant who elects to receive his Accrued Benefit in the form of a lump sum distribution, or to any Participant whose Benefit Commencement Date occurs before the earliest date on which he could have commenced receiving benefits under Part A. In addition, this section 7.3 shall not apply with respect to any benefits payable under Article VIII.

7.4 Suspension of Payments

(a) General Rule. Except as otherwise provided in section 7.5 no benefit payments shall be made under this Part B for any period in which a Participant is "Substantially Reemployed." A Participant is Substantially Reemployed if the Participant:

(1) Has remained in employment with CIGNA Corporation or a Related Company during any calendar month subsequent to his Normal Retirement Age, or returned to employment with CIGNA Corporation or a Related Company during any calendar month prior to his Normal Retirement Age after commencing to receive his vested Accrued Benefit in the form of an annuity, and

(2) In such calendar month, receives payment from CIGNA Corporation or a Related Company for work performed for at least 80 hours of service (as defined in 29 CFR 2530.200b-2(a)(1)).

(b) Notification of Suspension. If a Participant's benefit payments are suspended for any period after his Normal Retirement Date, the Plan Administrator shall notify the Participant, by personal delivery or first class mail, during the first calendar month commencing on or after his Normal Retirement Date in which the Plan withholds payments, that his benefits are suspended, in accordance with the require-

ments set forth in 29 CFR Section 2530.203-3(b)(4).

(c) Resumption of Payments. A Participant's benefit payments shall resume (or commence), subject to offset as provided by 29 CFR Section 2530.203-3(b)(2) and (3), no later than the first day of the third calendar month after the calendar month in which the Participant ceases to be Substantially Reemployed.

(1) If the Participant's benefit payments were suspended under paragraph 7.4(a) because the Participant remained in employment subsequent to his Normal Retirement Age, the benefit payable under this Part B when the Participant ceases to be Substantially Reemployed shall be his normal retirement benefit described in paragraph 5.2(c).

(2) If the Participant's benefit payments were suspended under paragraph 7.4(a) because the Participant returned to employment with CIGNA Corporation or a Related Company prior to his Normal Retirement Age after commencing to receive his vested Accrued Benefit in the form of an annuity, the benefit payable under this Part B when the Participant ceases to be Substantially Reemployed shall consist of:

a. The annuity benefit he was receiving prior to his reemployment, recalculated to reflect his

current age, but reduced by the value of the benefit payments already received; provided, however, that the amount of the recalculated annuity benefit shall in no event be less than the amount of the annuity benefit the Participant was previously receiving; and

b. His vested Accrued Benefit based upon his Years of Credited Service and Eligible Earnings during the period he was reemployed, as to which he may separately elect a form of payment under sections 7.1 and 7.2.

(d) Determination re Suspension. Every Participant must notify the Plan Administrator of any employment with CIGNA Corporation or a Related Company subsequent to the time his benefit payments from the Plan commence. A Participant may request that the Plan Administrator render a determination pursuant to section 13.5 as to whether specific contemplated employment would cause the Participant to become Substantially Reemployed.

7.5 Requirements Concerning Distributions

Notwithstanding any other provision of this Plan, all benefit distributions under this Article VII shall be subject to the following requirements:

(a) Before Death

(1) Last Date for Commencement of Benefit Payments. The payment of benefits to a Participant under this Plan shall commence not later than the 60th day after the close of the Plan Year in which the later of the following events occurs:

a. the Participant attains his Normal Retirement Age; or

b. the Participant has a severance from employment with CIGNA Corporation and all Related Companies.

(2) Additional Rule for Commencement of Benefit Payments.

a. Five-Percent Owners. The distribution of benefits to each Participant who is a 5% owner and who is entitled to a benefit under Part B shall commence not later than April 1 of the calendar year following the calendar year in which he attains age 70-1/2. For purposes of this subparagraph 7.5(a)(2), "5% owner" shall have the meaning prescribed in Code Section 401(a)(9)(C)(ii) (or any successor provision) and Treasury regulations issued thereunder.

b. Non-Five-Percent Owners. The distribution of benefits to each Participant who is not a 5% owner and who is entitled to a benefit under Part B shall com-

mence not later than April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70-1/2, or the calendar year in which the Participant has a severance from employment with CIGNA Corporation and all Related Companies. Notwithstanding the foregoing, the following rules shall apply to a Participant who is not a 5% owner, and who attains age 70-1/2 before January 1, 1999:

1. If such a Participant attains age 70-1/2 in 1997 or 1998 and has not commenced receiving a distribution of his benefits pursuant to the terms of the Plan as in effect prior to January 1, 1998, he may elect to commence receiving his benefit as of the April 1 of the calendar year following the calendar year in which he attains age 70-1/2.

2. If such a Participant attained age 70-1/2 prior to 1997 and commenced receiving a distribution of his benefit pursuant to the terms of the Plan as in effect prior to January 1,

1998, such distribution shall continue.

c. Additional Benefits -- Participants Receiving Benefit Distributions During Active Employment. Any additional benefits which accrue after a Participant begins receiving distributions in accordance with this subparagraph 7.5(a)(2) shall be distributed as a separate identifiable component beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such benefits accrue. Such additional benefit accruals for a calendar year shall be reduced (but not below zero), in accordance with Code Section 411(b)(1)(H)(iii)(I) and Treasury regulations thereunder, by the Equivalent Actuarial Value of any benefits distributed to the Participant pursuant to this subparagraph 7.5(a)(2).

d. Actuarial Adjustment -- Participants not Receiving Benefit Distributions During Active Employment. With respect to a Participant who is an Employee and who does not commence receiving a distribution of his benefit under subparagraph 7.5(a)(2) as of the April 1 of the calendar year following the cal-

endar year in which he attains age 70-1/2, the Participant's Accrued Benefit shall be actuarially increased in accordance with Code Section 401(a)(9)(C)(iii) and Treasury regulations issued thereunder to take into account the period after age 70-1/2 in which the Participant is not receiving benefits under the Plan.

(3) Duration of Benefit Payments. The distribution of benefit payments to each Participant shall be made:

a. In accordance with regulations prescribed by the Secretary of the Treasury, over the life of the Participant, or over the lives of the Participant and his designated Beneficiary; or

b. In accordance with such regulations, over a period not extending beyond the life expectancy of the Participant or the life expectancy of the Participant and his designated Beneficiary, provided that life expectancies shall not be redetermined.

(b) After Death

(1) Distributions Already Begun. If a Participant dies after distribution of his benefit has commenced in accordance with a method of distribution under subparagraph 7.5(a)(3), the remaining portion of such benefit

shall be distributed at least as rapidly as such benefit would have been distributed under such method as of the date of the Participant's death.

(2) Rules for Other Cases. If a Participant dies before distribution of his benefit has commenced, and if any portion of the Participant's interest is payable to (or for the benefit of) his designated Beneficiary, distribution may be made, in accordance with regulations prescribed by the Secretary of the Treasury, over the life of such designated Beneficiary or over a period not extending beyond the life expectancy of such designated Beneficiary; provided that such distribution shall commence not later than the later of:

a. The end of the calendar year following the calendar year in which the Participant dies; or

b. If the Participant's designated Beneficiary is his surviving Spouse, the end of the calendar year in which the Participant would have attained age 70-1/2; provided that if the Spouse dies before benefit payments begin, this subparagraph 7.5(b)(2) shall be applied as if the Spouse were the Participant. For purposes of this provision, any amount paid to the Participant's child shall be treated as if paid

to the surviving Spouse, if such amount becomes payable to the surviving Spouse when the child reaches majority (or other designated event permitted under Treasury regulations).

In any other case, the entire benefit of the Participant shall be distributed by the end of the fifth calendar year following the date of his death.

(c) Other Requirements. All benefit distributions under the Plan shall be made in accordance with the regulations under Code Section 401(a)(9), including the minimum distribution incidental benefit requirements of Code Section 401(a)(9)(G) and proposed Treas. Reg. Section 1.401(a)(9)-2, or any successor regulations.

(d) Transitional Rule. Notwithstanding the above requirements in this section 7.5, distribution on behalf of any Participant may be made in accordance with the following requirements (regardless of when such distribution commences):

(1) The distribution must be one provided for in the Plan.

(2) The distribution by the Plan is one which would not have disqualified the Plan under Code Section 401(a)(9) as in effect prior to amendment by the Tax Reform Act of 1984.

(3) The distribution is in accordance with a method of distribution designated by the Participant whose inter-

est in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.

(4) Such designation was in writing, was signed by the Participant or the Beneficiary, and was made before January 1, 1984.

(5) The Participant had accrued a benefit under the Plan as of December 31, 1983.

(6) The method of distribution designated by the Participant or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the Beneficiaries of the Participant listed in order of priority.

A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

If a distribution election is revoked, any subsequent distribution must satisfy the requirements of Code Section 401(a)(9) as amended by the Tax Reform Act of 1984. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the des-

ignation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

7.6 Special Rule for Former Participants of the PEG Plan

The retirement benefits and rights of an Employee who after January 1, 1965 was a participant in the plan set forth in the Pension Trust Agreement of Pacific Employer's Insurance Company, restated as of June 1, 1965, as amended September 1, 1965, shall not be diminished or adversely altered by the provisions of this Plan.

7.7 Direct Rollovers.

(a) General Rule. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a Distributee's election under this section 7.7, a Distributee may elect, at the time and in the manner prescribed by the Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) Definitions. The following definitions shall apply for purposes of this section 7.7:

(1) "Eligible Rollover Distribution" shall mean any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligi-

ble Rollover Distribution shall not include (A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more, (B) any distribution to the extent such distribution is required under Code Section 401(a)(9), and (C) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(2) "Eligible Retirement Plan" shall mean an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan shall be an individual retirement account or individual retirement annuity.

(3) "Distributee" shall include an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order shall be Distributees with regard to the interest of the spouse or former spouse.

(4) "Direct Rollover" shall mean a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

ARTICLE VIII - Pre-Retirement Death Benefits

8.1 Amount and Form of Pre-Retirement Death Benefit

(a) General Rule. If a Participant dies after earning a vested Accrued Benefit and before his Benefit Commencement Date, his Beneficiary shall be entitled to receive a death benefit under this section 8.1. The pre-retirement death benefit shall be payable whether or not the Participant was an Employee at the time of his death.

(1) If the Participant's Beneficiary is his Spouse, such death benefit shall be payable in the form of a single life annuity as described in paragraph 8.1(b), unless the Spouse elects to receive such death benefit in a lump-sum distribution as described in paragraph 8.1(c).

(2) If the Participant's Beneficiary is not his Spouse, such death benefit shall be payable in a lump-sum distribution as described in paragraph 8.1(c). Alternatively, a non-spouse Beneficiary who is an individual may elect to receive such death benefit in the form of a single life annuity as described in paragraph 8.1(b), unless such non-spouse Beneficiary is designated pursuant to the default rule set forth in section 1.8.

(b) Single Life Annuity. The single life annuity payable under paragraph 8.1(a) shall be an annuity payable in monthly installments for the life of the Beneficiary which is of Equivalent Actuarial Value (determined using the Applicable Interest Rate and the Applicable Mortality Table) to the Participant's vested Accrued Benefit.

(c) Lump-Sum Distribution. The lump sum distribution payable under paragraph 8.1(a) shall be a lump-sum distribution of the Participant's vested Accrued Benefit.

(d) Amount. For purposes of this section 8.1, the amount of the Participant's Accrued Benefit shall be determined as if the Participant had terminated employment on the date of his death (or his actual date of termination, if earlier), survived to the day before payments are made (or commence) and elected to receive (or to commence receiving) his Accrued Benefit as of such date.

8.2 Time of Distribution

The benefit described in section 8.1 shall be payable as soon as practicable following the Participant's death, or, except as provided in section 8.4, as of the first day of any subsequent month elected by the Beneficiary, subject to the following:

(a) If the Participant's Beneficiary is his surviving Spouse, payments shall commence as of the date which would have been the Participant's Normal Retirement Date, unless the Spouse consents to the commencement of such payments at an earlier date.

(b) If the Participant's Beneficiary (or the beneficiary of the Participant's Beneficiary) is not his surviving Spouse:

(1) If such beneficiary elects to receive the benefit payable under section 8.1 in the form of a single life annuity, such benefit payments must commence not later than December 31 of the calendar year following the year in which the Participant died; or

(2) Otherwise, the benefit payable under section 8.1 must be paid in a lump-sum distribution no later than December 31 of the fifth calendar year following the year in which the Participant died.

8.3 Beneficiary Designation

(a) General Rule. A Participant may designate a Beneficiary to receive any death benefit payable under section 8.1. Such

designation shall be made by filing a written election on a form provided by the Plan Administrator during the applicable election period set forth in paragraph 8.3(b). A married Participant's Beneficiary shall be his Spouse, unless his Spouse consents in the manner provided under paragraph 7.1(d) to the designation of a nonspouse Beneficiary. The Participant may revoke his Beneficiary designation at any time without the consent of his Spouse; however, spousal consent is required for a new designation of a nonspouse Beneficiary by a married Participant.

(b) Election Period. A Participant's Beneficiary designation may be made at any time; however, if the Participant is married at his date of death, his designation of a nonspouse Beneficiary shall be valid only if his Spouse has consented to such designation in the manner provided under paragraph 7.1(d), and only under the following circumstances:

(1) The designation is made on or after the first day of the Plan Year in which the Participant attains age 35;

(2) The designation is made on or after the date of the Participant's separation from service (and the Participant has not returned to the employ of a Participating Company); or

(3) The Participant dies before separating from service and before the first day of the Plan Year in which he would have attained age 35. (If a

Participant who has not separated from service makes a designation of a nonspouse Beneficiary before the first day of the Plan Year in which he attains age 35, such designation shall not be valid in the event of his death after such day (or after his separation from service) if he is married at the time of his death; his surviving Spouse will be his Beneficiary unless he has made a designation which qualifies under subparagraph 8.3(b)(1) or (2).)

(c) Explanation. The Plan Administrator shall provide each Participant, within the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year in which the Participant attains age 34 or, if later, during the period beginning one year before and ending one year after he becomes a Participant, a written explanation with respect to the death benefit comparable to that required under paragraph 7.1(b). In the case of a Participant who separates from service before he attains age 35, such explanation shall be provided during the period beginning one year before and ending one year after such separation.

(d) Effect of Qualified Domestic Relations Order. To the extent that the Plan treats a former spouse of a Participant as the spouse of such Participant for purposes of Code Section 401(a)(11) and Section 417 pursuant to a Qualified Domestic Rela-

tions Order, the actual spouse of such Participant shall not be treated as the spouse of such Participant for such purposes. If, pursuant to a Qualified Domestic Relations Order, more than one individual is a designated spouse, the amount of the pre-retirement death benefit payable under section 8.1 shall not exceed the amount which would be paid if there were only one surviving spouse.

(c) Death of Beneficiary. If a Participant's Beneficiary survives the Participant but dies prior to the date on which benefit payments are to commence to such Beneficiary under this Article VIII, the benefit described in section 8.1 shall be paid to the beneficiary designated by the Participant's Beneficiary. If, upon the death of the Participant's Beneficiary, there is no valid designation of beneficiary on file with the Plan Administrator, or the beneficiary has predeceased the Participant's Beneficiary, the beneficiary shall be determined by the order of priority set forth in paragraphs (a) through (d) of section 1.8, by reference to the Participant's Beneficiary (and not the Participant). The benefit described in section 8.1 shall be payable to such beneficiary within the period described in section 8.2.

8.4 Cash-Out of Small Benefits

Notwithstanding any other provision of this Article VIII, if the lump-sum death benefit to which a Participant's Beneficiary is entitled does not exceed $5,000 as of the date of dis-

tribution, the Plan Administrator shall cause such lump-sum death benefit to be paid to the Participant's Beneficiary in lieu of any other death benefit described in this Article VIII. Such distribution shall be made as soon as practicable after the Participant's death.

ARTICLE IX - Funding

9.1 Contributions

In accordance with the funding requirements of ERISA, the Participating Companies shall make contributions to the Trust in order to provide the retirement benefits described in the Plan, except to the extent that the Secretary of the Treasury may waive the funding standards or that the Secretary of Labor may extend the period for compliance with such standards.

9.2 Time of Contributions

The Participating Companies shall make payment of contributions to the Trust for any Plan Year at such time or times as may be required under Code Section 412 and Treasury Regulations thereunder.

9.3 Contributions Irrevocable – Limited Refunds

Except as provided below and in paragraph 14.2(g), all contributions of Participating Companies to the Trust shall be irrevocable. Such contributions and any income therefrom shall be held for the exclusive purpose of providing benefits to Participants in the Plan and their Beneficiaries and defraying

reasonable expenses of administering the Plan. Contributions shall be refunded to the Participating Companies under the following circumstances and subject to the following limitations:

(a) All contributions to the Plan are conditioned on their deductibility under Code Section 404 or any successor provision. To the extent that a Federal income tax deduction for any contribution is disallowed by the Internal Revenue Service, the Trustee shall refund to the Participating Companies the amount so disallowed within one year of the date of such disallowance, upon presentation of evidence of disallowance and a demand by the Participating Companies for such refund.

(b) If any contributions are made by a Participating Company in whole or in part by reason of a mistake of fact, so much of such contributions as are attributable to the mistake of fact shall be returned to the Participating Company on demand, upon presentation of evidence by the Participating Company of the mistake of fact to the Trustee; provided, however, that such demand and repayment must be effectuated within one year after the payment of the contributions to which the mistake applies.

The amounts which may be returned to a Participating Company under paragraphs 9.3(a) and (b) shall be the excess of the amounts contributed over the amounts that would have been contributed had there not

been a mistake of fact or mistake in determining the

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ARTICLE X - Participant Contributions

10.1 Definitions Applicable to Article X

(a) "Credited Interest" shall mean interest for the number of full months from January 1 following the date each such contribution was made under the Aetna Plan or the CG Plan to the date or dates specified in this Article X.

(b) "Required Employee Contributions" shall mean those employee contributions required as a condition of participation in the Aetna Plan before January 1, 1956, or in the CG Plan before June 1, 1974, which are the effective dates upon which those plans became non-contributory and/or those employee contributions required as a condition of participation in the PEG Plan prior to its merger into the INA Plan.

10.2 Participant Contributions in General

Participants are not required to contribute to the Plan as a condition of employment, plan membership or accrual of benefits following the date a Prior Plan became non-contributory, which, in each instance, was prior to 1974.

Section 10.3 contains provisions applicable to the Required Employee Contributions to the Aetna and CG Plans. Section 10.4 contains provisions applicable to the Required Employee Contributions to the PEG Plan. Section 10.5 contains provisions applicable to vesting in these contributions.

10.3 Required Employee Contributions to the Aetna and CG Plans

(a) Required Employee Contributions accumulated under the Aetna and CG Plans shall be retained in the Group Annuity Contract and held in the Plan Trust. These Required Employee Contributions shall be held in a separate individual account in the name of each Employee who made such contributions, and Credited Interest shall be added to the Employee's contributions. The rate of Credited Interest on Required Employee Contributions on and after January 1, 1989 shall be the rate specified in Code Section 411(c).

(b) A Participant who has a severance from employment or retires may elect prior to receiving benefits pursuant to Article V to receive a lump sum refund of his Required Employee Contributions to the Aetna Plan or to the CG Plan, together with all Credited Interest computed thereon to the first day of the month in which money is paid out. Upon election of such refund, however, the Participant shall forfeit a proportional amount of his accrued benefit derived from employer contributions which accrued before 1974, as permitted under

Code Section 411(a)(3)(D)(iii) and Treasury Regulations issued thereunder.

(c) If a Participant who has made Required Employee Contributions to the Prior Aetna or CG Plan has a severance from employment and is not eligible to receive any retirement benefit from this Part B under Article V, and if the Participant elects not to receive a lump sum refund of his Required Contributions to the Prior Plans, the Participant will still be eligible to receive retirement income benefits attributable to his Required Employee Contributions in accordance with the provisions of Part A applicable to such Required Employee Contributions.

(d) If a Participant who dies before his Benefit Commencement Date has met all the requirements of Article VIII when he dies, benefits will be paid to his Beneficiary in accordance with Article VIII. Upon the death of the Beneficiary, the Participant's contingent Beneficiary will receive a refund equal to the excess, if any, of (1) over (2) below, where:

(1) is the Participant's Required Employee Contributions under the Aetna Plan or CG Plan which have not been refunded together with Credited Interest computed thereon to his date of death; and

(2) is the benefit payment or the sum of the benefit payments made to the Participant's Beneficiary under Article VIII.

If a Participant who dies before his Benefit Commencement Date has not met all the requirements of Article VIII when he dies, so that no benefits are otherwise payable under Article VIII, the Participant's Beneficiary will receive a refund of the Participant's Required Employee Contributions under the Prior Aetna Plan or CG Plan which have not been refunded, together with Credited Interest computed thereon to the date of the Participant's death.

(e) Upon the death, after the Participant's Benefit Commencement Date, of the later to die of the Participant or the Participant's Beneficiary, the Participant's contingent Beneficiary will receive a refund equal to the excess, if any, of (1) over (2) below, where:

(1) is the Participant's Required Employee Contributions under the Prior Aetna Plan or CG Plan which have not been refunded, together with Credited Interest computed thereon to his Benefit Commencement Date; and

(2) is the sum of all of the retirement benefit payments made to the Participant and his Beneficiary, if any.

10.4 Required Employee Contributions to the PEG Plan

(a) Required Employee Contributions accumulated under the PEG Plan shall be retained in the Trust for this Plan. Such Required Employee Contributions shall not

be maintained in separate accounts for each contributing Employee.

(b) If a former PEG Plan participant who made Required Employee Contributions to the PEG Plan withdrew his Required Employee Contributions from the Plan before January 1, 1968, the Participant's Part A Accrued Benefit shall be proportionally reduced in accordance with the applicable provisions of Part A.

10.5 Vesting in Participant Contributions

Each Participant shall have a 100% vested interest at all times in the amount of his Required Employee Contributions and in the Credited Interest attributable to those contributions, or, if applicable, in the accrued benefit attributable to such Required Employee Contributions.

10.6 Forms of Payment

Notwithstanding any provisions to the contrary, any benefits payable under this Article X, shall be distributed as follows:

(a) If payable to the Participant, in the Qualified Annuity form described in paragraph 7.1(a), or in any other form of payment available under section 7.2, if elected by the Participant in accordance with the applicable provisions of sections 7.1 and 7.2.

(b) If payable following the death of the Participant, to the Participant's Beneficiary in accordance with the applicable provisions of Article VIII.

ARTICLE XI - Trust

11.1 Trust Agreement

A trust agreement has been entered into between CIGNA Corporation and a named Trustee. The Trust established under the trust agreement is for the purposes of holding, managing and administering all monies (including Group Annuity Contracts) and other properties held by the Trustee for the exclusive benefit of the Participants and their Beneficiaries. All contributions under the Plan and all assets of the Plan shall be held in this Trust.

11.2 Payment Through Trustee

If any Plan benefits, as an annuity under the Group Annuity Contract, shall become payable to any Participant, Spouse or other Beneficiary, such payee may elect that, in lieu of each payment being made directly to the payee, the right to such payments and to the annuity under which such payments are made shall be retained by the Trustee. In the event of such election, the Trustee shall make each benefit payment, in the amount otherwise provided herein, to such payee. Also, in such event, any certificate issued by the insurance company under the Group Annuity Contract shall provide that payments shall be made to the Trustee and each payment received by the Participant or Spouse or contingent survivor shall be deemed to constitute an installment payment of the payee's interest under the Plan and Trust, and no annuity shall be distributed or

deemed to have been distributed to such payee.

ARTICLE XII - Fiduciary Responsibility Provisions

12.1 Corporate Benefit Plan Committee

As required by ERISA, CIGNA Corporation has appointed a named fiduciary of this Plan and, until otherwise changed by action of the Board of Directors, such named fiduciary is the Committee.

12.2 Role of Committee

The Committee shall have responsibility for the management, operation, and administration of the Plan, including the establishment of a funding policy. The Committee shall have the authority to allocate among Committee members, and to delegate to committees, corporate departments, units, officers and/or employees of CIGNA Corporation or a Related Company, the managerial, operational, administrative and/or investment responsibility for the Plan. The Committee shall also have the authority to revoke such delegations and redelegate at any time and from time to time. In exercising its right to delegate, the Committee may appoint one or more fiduciaries and/or named fiduciaries.

12.3 Multiple Fiduciary Capacity

Any person or group of persons may serve in more than one fiduciary capacity with respect to this Plan. A named fiduciary (or a fiduciary designated by a named fiduciary) may employ or contract with one or more

persons to render advice with regard to any responsibilities such fiduciary has under the Plan. A person who is a named fiduciary with respect to control and management of the assets of the Plan may appoint an investment manager or managers to manage any assets of the Plan. The investment manager may be CIGNA Corporation or a Related Company.

12.4 Delegation and Allocation of Fiduciary Responsibilities

CIGNA Corporation may allocate fiduciary responsibilities (other than trustee responsibilities) among named fiduciaries if there is more than one. A named fiduciary shall have the right to designate other persons to carry out fiduciary responsibilities under the Plan, provided, however, that claim review responsibility shall not be delegated to other than a named fiduciary. If any fiduciary responsibility of a named fiduciary is allocated to any person or entity or a person or entity is designated to carry out such responsibility, then such named fiduciary shall not be liable for any act or omission of such person or entity in carrying out such responsibility, except as provided by ERISA.

12.5 Appointment of Committee Members

The Chief Executive Officer of CIGNA Corporation is authorized to appoint a chairman and members of the Committee who shall be officers of CIGNA Corporation or a Related Company. The Chief Executive Officer may revoke any such appointment, accept any resignation of any appointee, and appoint suc-

cessors and/or additional members of the Committee, as he or she may deem necessary or appropriate from time to time.

12.6 Resignation and Termination of Employment of Fiduciary

Any person who is a fiduciary or a member of a Committee which is a fiduciary may resign from such duties or membership by giving reasonable notice. If such person is an employee of CIGNA Corporation or of a Related Company, such resignation shall not require a termination of employment. If such person does, however, terminate employment, his duties as a fiduciary or as a member of a Committee which is a fiduciary shall cease upon such termination of employment unless such person is reappointed to such fiduciary position or to such Committee by the appropriate person and/or fiduciary.

12.7 Limitation of Guarantees on Investments

No fiduciary guarantees the Fund in any manner against investment loss or depreciation of asset value.

ARTICLE XIII – Plan Administration

13.1 Appointment and Acceptance

The Committee shall delegate to a Plan Administrator the duties, authority and functions set forth in this Article XIII.

13.2 Duties and Authority; Discretionary Authority

The Plan Administrator shall administer the Plan on behalf of CIGNA Corporation in a nondiscriminatory manner for the exclusive benefit of Participants and their Beneficiaries. The Plan Administrator shall perform all such duties as are necessary to operate, administer and manage the Plan in accordance with the its terms, including but not limited to the following:

(a) To determine all questions relating to a Participant's participation and benefits under the Plan;

(b) To maintain or cause to be maintained all necessary records for the administration of the Plan;

(c) To compute and authorize the payment of retirement income and other benefit payments to eligible Participants and beneficiaries;

(d) To interpret and construe the provisions of the Plan and to make regulations which are not inconsistent with the terms thereof;

(e) To advise or assist Participants regarding any rights, benefits or elections available under the Plan;

(f) To provide the Participant an appropriate, written explanation in non-technical terms, within a reasonable period prior to the Benefit Commencement Date, of the

notice required by paragraph 7.1(b) and paragraph 8.3(c);

(g) To take such actions as are necessary to establish and maintain the Plan as a retirement program which is at all times in full and timely compliance with any law or regulation having pertinence to this Plan;

(h) To have reasonable powers necessary or appropriate to accomplish its duties as a Plan Administrator, including delegation to, employment of, or contracting for the services of, others to assist in performing its duties; and

(i) To determine whether a domestic relations order served upon the Plan is a Qualified Domestic Relations Order, to place in escrow any benefits payable during the period of such determination, and to take such actions as may be necessary to comply with a Qualified Domestic Relations Order.

The Plan Administrator shall have sole discretion to carry out its responsibilities under this Article XIII, including responsibility to determine whether a person is eligible to participate in the Plan or eligible to receive benefits under the Plan; to determine the amount of benefits to which any Participant, Beneficiary, surviving Spouse, or contingent survivor might be entitled under the Plan; to make findings of fact needed to make such determinations; and to interpret Plan terms and provisions, including disputed and doubtful terms. The Plan Administrator's decisions on all such matters, including any

determinations, findings and interpretations, shall be final and binding on all parties.

13.3 Expenses and Assistance

All reasonable expenses necessary to operate and administer the Plan shall be borne by the Plan unless CIGNA Corporation elects to pay them. CIGNA Corporation shall furnish the Plan Administrator with such clerical and other assistance as is required in the performance of its duties.

13.4 Participants and Other Payees – Data

Participants and other persons affected by the Plan shall furnish the Plan Administrator upon request such documents, evidence or information which the Plan Administrator considers necessary or desirable for the purpose of administering the Plan. The Plan Administrator may cause to be withheld any benefit payment, otherwise due the Participant or other person, until the required document, evidence or other information is so furnished.

13.5 Claims Procedure

(a) Filing a Claim for Benefits. A Participant or Beneficiary shall notify the Plan Administrator or its delegate of a claim for benefits under the Plan. Such request may be in any form adequate to give reasonable notice to the Plan Administrator or its delegate and shall set forth the basis of such claim and shall authorize the Plan Administrator or its delegate to conduct such examinations as may be necessary to determine the validity of the claim and to

take such steps as may be necessary to facilitate the payment of any benefits to which the Participant or Beneficiary may be entitled under the Plan. The Plan Administrator shall make all determinations as to the right of any person to a benefit under the Plan.

(b) Denial of Claim. If the Plan Administrator denies in whole or in part any claim for benefits under the Plan by any Participant or Beneficiary, the Plan Administrator shall furnish the claimant with written notice of the decision not later than ninety (90) days after receipt of the claim, unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the claimant before the end of the initial ninety- (90-) day period. In no event shall such extension exceed the period of ninety (90) days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan Administrator expects to render the final decision.

The written notice of the denial of a claim shall set forth in a manner calculated to be understood by the claimant:

(1) The specific reasons or reasons for the denial;

(2) Specific reference to the pertinent Plan provisions on which the denial is based;

(3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(4) Appropriate information as to the steps to be taken if the claimant wishes to submit his claim for review.

(c) Appeals Procedure. A claimant or his authorized representative may request a review of the denied claim by the Plan Administrator. Such request shall be made in writing and shall be presented to the Plan Administrator not more than sixty (60) days after receipt by the claimant of written notice of the denial of the claim. The claimant shall have the right to review the pertinent documents and to submit issues and comments in writing. The Plan Administrator shall make its decision on review not later than sixty (60) days after receipt of the claimant's request for review, unless special circumstances require an extension of time, in which case a decision shall be rendered as soon as possible, but not later than 120 days after receipt of the request for review. The decision on review shall be in writing and shall include the specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to pertinent Plan provisions on which the decision is based.

The Plan claims procedure shall be administered in accordance with the applicable regulations of the Department of Labor.

13.6 Clerical Error

If any fact pertaining to eligibility for an amount of benefits payable under the Plan to a Participant or other payee has been misstated, or in the event of clerical error, the benefits will be adjusted by the Plan Administrator of its delegate on the basis of the correct facts in a manner precluding individual selection.

ARTICLE XIV - Amendment and Termination

14.1 Amendment

CIGNA Corporation reserves the right to amend the Plan at any time and from time to time, in whole or in part, including without limitation, retroactive amendments necessary or advisable to qualify the Plan and its related Trust under the provisions of Code Sections 401(a) and 501, respectively, or any successor or similar statute hereafter enacted. The Plan may be amended by: a resolution of the Board of Directors of CIGNA Corporation; a resolution of the People Resources Committee of the Board of Directors of CIGNA Corporation (or a successor committee); or by a written instrument approved and executed by one or more duly authorized officers of CIGNA Corporation.

Notwithstanding the foregoing, and except to the extent that such amendment may be nec-

essary to permit the Plan to qualify under Section 401(a) of the Code, or the Trust to qualify as tax exempt under Section 501 of the Code, or to permit the deduction of contributions under the provisions of any applicable internal revenue law:

(a) No such amendment shall cause any part of the assets of the Plan and the Trust to revert to or be recoverable by CIGNA Corporation or a Related Company, or (except as required to pay taxes or administrative expenses) to be used for, or diverted to purposes other than for, the exclusive benefit of Participants, former Participants and their Beneficiaries except as provided in section 9.3 and paragraph 14.2(g);

(b) No such amendment shall cause any reduction in the amount of any Participant's accrued benefit, except as permitted in Code Section 412(c)(8). For purposes of this paragraph 14.1(b), an amendment which has the effect of eliminating or reducing an early retirement benefit or retirement-type subsidy (as defined in regulations issued by the Secretary of the Treasury), or (2) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment, shall be treated as reducing accrued benefits, except as provided in Code Section 411(d)(6) and regulations thereunder.

(c) No such amendment shall change any vesting schedule unless, in the case of an Employee who is a Participant on (1) the

date the amendment is adopted, or (2) the date the amendment is effective, if later, the vested percentage of such Participant's right to his accrued benefit is not less than such percentage computed under the Plan without regard to such amendment. Furthermore, no such amendment shall otherwise change any vesting schedule unless each Participant having three (3) or more Years of Vesting Service is permitted to elect, in accordance with the Code and applicable regulations, to have the vested percentage of his accrued benefit determined without regard to such amendment; provided that no such election shall be given to any Participant whose vested percentage under the Plan as amended cannot at any time be less than such percentage determined without regard to such amendment.

(d) No such amendment shall materially increase the duties, powers, or liabilities of the Trustee without its written consent.

(e) No such amendment shall permit any part of the assets of the Plan or the Trust to be used to pay premiums or contributions to CIGNA Corporation or a Related Company under any other plan maintained by CIGNA Corporation or a Related Company for the benefit of its Employees.

14.2 Termination or Partial Termination

(a) Although CIGNA Corporation and each other Participating Company has established the Plan with the bona fide intention and expectation that it will continue

the Plan indefinitely, nevertheless CIGNA Corporation and each other Participating Company shall not be under any obligation or liability or to continue the Plan or to maintain the Plan for any given length of time.

(b) CIGNA Corporation, by resolution of its Board of Directors or the People Resources Committee of its Board of Directors (or a successor committee), or by a written instrument executed by a duly authorized officer of CIGNA Corporation, may in its sole and absolute discretion terminate the Plan in whole or in part at any time without any liability for such termination. Upon termination or partial termination of the Plan, the rights of all affected participants to benefits accrued to the date of such termination or partial termination shall become non-forfeitable (within the meaning of Treasury Regulations Section 1.411(a)-4). However, no participant or other individual shall have recourse towards the satisfaction of any benefits accrued under the Plan other than from the Fund or the Pension Benefit Guaranty Corporation.

(c) In the event of complete termination of the Plan, and after any final expenses have been withdrawn from the Fund, CIGNA Corporation shall cause the amount remaining in the Fund to be allocated according to the following categories, in the order given:

(1) First, there shall be allocated an amount necessary to provide each participant's accrued benefit derived from the participant's non-mandatory contributions.

(2) Second, there shall be allocated an amount necessary to provide each participant's accrued benefit derived from the participant's mandatory contributions.

(3) Third, there shall be allocated an amount necessary to provide retirement benefits for participants and Beneficiaries who, three (3) years prior to the Plan termination date, were either receiving retirement benefits or would have been eligible to receive retirement benefits had the participant retired more than three years (3) before the Plan termination date.

(For this purpose "retirement benefits" means retirement benefits, qualified pre-retirement survivor annuity benefits or other surviving Spouse benefits determined for the participant or Beneficiary in accordance with provisions of the Plan in effect during the five- (5) year period ending on the Plan termination date under which such benefits would be the least.)

(4) Fourth, there shall be allocated an amount necessary to provide all other retirement benefits guaranteed under

Title IV of ERISA, as determined in accordance with Section 4044 thereof.

(5) Fifth, there shall be allocated an amount necessary to provide all other retirement benefits not guaranteed by the PBGC which are nonforfeitable in accordance with Article V.

(6) Sixth, there shall be allocated an amount necessary to provide all other retirement benefits under the Plan.

The amount necessary to provide the retirement benefit specified in each of the above categories shall be determined in accordance with annuity purchase rate assumptions in the Group Annuity Contract.

(d) Amounts allocated on a participant's behalf under any category in paragraph 14.2(c) above shall be appropriately adjusted if:

(1) An amount has been allocated on such participant's behalf under a prior category, and/or

(2) All or a portion of a participant's or Beneficiary's retirement benefit or surviving Spouse benefit has been guaranteed under an insurance company contract prior to the Plan termination date.

If the amount available for allocation under any category is not sufficient to fully provide retirement benefits specified for such category, a pro-rata allocation of the amount available will be made and re-

duced retirement benefits will be provided to the extent possible.

(e) As provided by ERISA, the Internal Revenue Service may require that the Fund be allocated in a manner different than that specified above in order to meet nondiscrimination requirements.

(f) In the event a participant elects a refund of his Required Employee Contributions (as defined in paragraph 10.1(b)) under the Prior Aetna Plan or CG Plan together with Credited Interest (as defined in paragraph 10.1(a)) after the Plan termination date, there will remain to his credit the amount of any retirement benefits provided by assets allocated on his behalf other than those attributable to his Required Employee Contributions.

(g) If any residual assets remain after the assets of the Fund have been withdrawn and allocated in accordance with the preceding terms of this section:

(1) Any portion of such residual assets which are attributable to employee contributions (determined in accordance with ERISA Section 4044(d)(3)(B)) shall be equitably distributed to the participants who made such contributions or their beneficiaries in accordance with ERISA Section 4044(d)(3)(B); and

(2) Any remaining residual assets shall be returned to the Participating Companies.

(h) Notwithstanding the foregoing provisions, the amount of any retirement benefits or surviving Spouse benefit otherwise to be provided in accordance with this section will be restricted in accordance with section 14.3 to any extent required.

14.3 Limitations re Highly Compensated Employees

(a) Restriction of Benefits. In the event of Plan termination, the benefit of any highly compensated employee (as defined in Code Section 414(q) and the regulations thereunder, including any highly compensated former employee) shall be limited to a benefit which is nondiscriminatory under Code Section 401(a)(4).

(b) Restrictions on Distributions. Annual payments to a Restricted Participant shall be restricted to an amount equal to the payments that would be made on behalf of such Restricted Participant under a single life annuity which is of Equivalent Actuarial Value to the sum of the Restricted Participant's accrued benefit and his other Benefits under the Plan. However, the restrictions of this paragraph 14.3(b) shall not apply if:

(1) after payment to such Restricted Participant of all Benefits, the value of Plan assets equals or exceeds 110% of the value of current liabilities (as defined in Code Section 412(l)(7)); or

(2) The value of the Benefits for such Restricted Participant is less than one

percent (1%) of the value of current liabilities.

(c) Definitions. The following definitions shall apply for purposes of this paragraph:

(1) "Restricted Participant" shall mean, for any Plan Year, any highly compensated employee or highly compensated former employee, as defined in Code Section 414(q) and regulations thereunder; provided, however, that for any Plan Year, the total number of Restricted Participants shall be limited to a group of 25 highly compensated employees and highly compensated former employees. Such group shall consist of those highly compensated employees and highly compensated former employees with the greatest compensation.

(2) "Benefit" shall include loans, if any, in excess of the amounts set forth in Code Section 72(p)(2)(A), any periodic income, any withdrawal values payable to a living Employee, and any death benefits not provided for by insurance on the Employee's life.

(d) Inapplicability of Restrictions. In the event that the provisions of this section 14.3 are no longer necessary to qualify this Plan under Code Section 401(a), this section 14.3 shall be ineffective without amendment to the Plan.

14.4 Withdrawal from Participation

(a) Each of the Participating Companies other than CIGNA Corporation, by action of its board of directors and upon notice in writing to the Plan Administrator, may elect to withdraw from participation in the Plan. The withdrawal of any Participating Company from participation in the Plan shall act to terminate the right of participation in the Plan by the Employees of the withdrawing Participating Company after the notice of withdrawal is received.

(b) Whenever one of the Participating Companies elects to withdraw from the Plan, it shall, by action of its board of directors, file notice in writing with the Trustee and with the Plan Administrator of its election.

(c) In the event that CIGNA Corporation (by a resolution of the Board of Directors of CIGNA Corporation; a resolution of the People Resources Committee of the Board of Directors of CIGNA Corporation (or a successor committee); or by a written instrument approved and executed by one or more duly authorized officers of CIGNA Corporation) shall determine that one of the Participating Companies shall no longer participate in the Plan, or if one of the Participating Companies is no longer eligible to participate in the Plan, the Participating Company shall withdraw from the Plan in the manner provided in paragraphs 14.4(a) and (b) within six (6) months thereafter. If withdrawal does not occur, the Plan Administrator shall direct

that the Participating Company's participation in the Plan be terminated.

(d) Depending upon the circumstances of the withdrawal of the Participating Company, and taking into account whether the withdrawing Participating Company is terminating the plan, continuing the plan or replacing the plan, the Plan Administrator shall direct the Trustee to hold as a separate Trust, segregate within the Trust or transfer to a successor Trust or Plan Administrator assets allocable to the Participants and their Beneficiaries of the withdrawing Participating Company, as the Plan Administrator deems appropriate.

(e) The withdrawal from the Plan by one of the Participating Companies other than CIGNA Corporation pursuant to the provisions of this Article XIV shall not affect in any manner the continuance of the Plan with respect to any of the other Participating Companies, and all the terms and conditions of the Plan shall continue to be applicable to such Participating Companies and their Employees as if such withdrawal and termination had not taken place.

14.5 Change of Control

(a) Notwithstanding any other provision of this Plan, in the event of a Change of Control:

(1) For a three (3) year period beginning on the effective date of a Change of Control, no action shall be taken by any Participating Company, Related Company, or successor to a Partici-

pating Company or Related Company which results, or might result, in:

a. A termination of the Plan in whole or in part;

b. The cessation of benefit accruals under the Plan; or

c. Any reduction in the rate by which benefits accrue under the Plan.

(2) Other than under the provisions of section 9.3 above and paragraphs 14.5(b) and 14.5(c) below, for a five (5) year period beginning on the effective date of a Change of Control, no action shall be taken by any Participating Company or Related Company which results, or might result, in:

a. A reversion of assets of the Fund to any Participating Company, Related Company, or any successor of a Participating Company or related Company; or

b. A diminution of the assets of the Fund other than by providing benefits to Participants or their Beneficiaries or by defraying reasonable expenses of the Plan.

(3) Actions precluded by subparagraph 14.5(a)(2) above include, but are not limited to: any reversion in the absence of a termination of the Plan; any merger of this Plan with another

plan or plans or merger of another plan or plans with this Plan, if, using the same interest rate and mortality assumptions for all plans as are used for this Plan as of the effective date of the Change of Control, such other plan or plans are less adequately funded than this Plan; and any change in actuarial funding method which changes the Plan's level of funding or reduces the level of contributions required of any Participating Company. Subparagraph 14.5(a)(2) shall not, however, preclude any advice or decision by the Plan's investment manager which results, or might result, in a diminution of assets of the Fund so long as such advice, if followed, or such decision constitutes a reasonably prudent investment decision in compliance with the fiduciary responsibility provisions of ERISA.

(b) Any Participant who is employed by a Participating Company on the effective date of a Change of Control, and who is discharged other than on account of a Termination for Cause at any time during the three (3) year period beginning on the effective date of a Change of Control, shall be entitled to an adjustment to his Accrued Benefit as hereinafter described in this paragraph 14.5(b).

For the Plan Year in which such Participant's severance from employment occurs, his Retirement Account shall be increased

by a Benefit Credit determined in accordance with the following:

(1) The Participant's Eligible Earnings shall be his highest base salary or other base compensation, stated as an annual amount, that is in effect between the effective date of the Change of Control and the date of Participant's discharge;

(2) The Participant shall be deemed to have completed a Year of Credited Service in such Plan Year; and

(3) The Participant's Benefit Credit for such Plan Year (as determined under section 4.1 in accordance with the foregoing) shall be multiplied by the number of full and fractional years (to the nearest whole month) from the first day of such Plan Year to the end of the three-year period beginning on the effective date of the Change in Control. (For example, if a Change in Control occurred on July 1, 1998, and the Participant's severance from employment occurred on July 1, 1999, his Benefit Credit for 1999 would be multiplied by 2.5).

The excess of such Benefit Credit under this paragraph 14.5(b) over the amount of any Benefit Credits deemed made as of the end of any prior calendar quarter during such Plan Year shall be deemed to be made on the last day of the calendar

month in which the Participant is discharged.

(c) Before a Change of Control, the Plan may be amended in any manner regardless of its effect on rights or benefits created by this section 14.5, and such rights or benefits shall not be treated in any manner as having accrued before the effective date of a Change of Control. For the five (5) year period beginning on the effective date of a Change of Control, however, no amendment to the Plan, other than as may be required by law, may be made which in any manner would adversely affect the rights or benefits of any Participant or Beneficiary under this section 14.5. At the expiration of the five (5) year period beginning on the effective date of a Change of Control, the provisions of this section 14.5 shall be of no further force and effect.

ARTICLE XV - Miscellaneous

15.1 Limitation of Rights; Employment Relationship

Neither the establishment of the Plan nor any modifications thereof, nor the payment of any benefits, shall be construed as modifying or affecting in any way the terms of employment of any Employee or as conferring any rights upon any Employee for continuation of employment, nor shall such actions interfere with the rights of CIGNA Corporation or any Related Company to discharge any Employee without regard to the effect which such ac-

tion might have upon him as a participant in the Plan, whenever the interests of CIGNA Corporation or any Related Company, in its sole judgment, may so require.

15.2 Reorganization; Transfer of Assets

(a) If a Participating Company other than CIGNA Corporation merges or consolidates with or into a corporation, or ownership is transferred to a corporation or an unincorporated entity other than CIGNA Corporation or a Related Company, accruals under the Plan shall cease with respect to the Employees of that Participating Company on the effective date of such merger, consolidation or transfer. If the surviving corporation resulting from such transfer, merger or consolidation, or the corporation to which the assets have been transferred, adopts this Plan, however, the Plan shall continue and the surviving corporation shall succeed to all rights, powers and duties of the Participating Company hereunder. The Plan Administrator shall direct that the portion of the Plan assets which pertains to employees of the surviving or successor corporation be transferred to the successor trustee or plan administrator, if applicable, appointed by that corporation. The employment of any Employee who is continued in the employ of a successor corporation shall not be deemed to have been terminated for any purpose hereunder.

(b) In no event shall this Plan be merged or consolidated with any other employee

benefit plan, nor shall there be any transfer of assets or liabilities from this Plan to any other such plans, unless immediately after such merger, consolidation or transfer, each Participant's benefits, if such other plan were then to terminate, are at least equal to or greater than the benefits which the Participant would have been entitled to had this Plan been terminated immediately before such merger, consolidation, or transfer.

15.3 Construction

The Plan and Trust shall each form a part of the other by reference and the terms shall be used therein interchangeably. To the extent possible all provisions of the Plan and the Trust forming a part thereof shall be construed, and all powers and duties granted by the Plan and the Trust shall be exercised, in a manner which will allow the Plan and the Trust to remain qualified under Code Sections 401(a) and 501, respectively. Headings of articles, sections and paragraphs of this document, to the extent they do not indicate a date a provision is effective or ceases to be effective, are for convenience of reference only, and as such they constitute no part of the Plan and are not to be considered in the meaning or construction of the Plan.

In construing the text of this Plan, the masculine shall include the feminine and the singular shall include the plural, and the plural the singular wherever the context shall plainly so require.

15.4 Non-Assignment

(a) General Rule. Plan benefits are provided for Participants or other payees for their support and benefit, and the right of any Participant or Beneficiary to any benefit payment under the Plan shall not be subject to any voluntary or involuntary alienation or assignment, and shall be free from the claims of all creditors.

(b) Exceptions.

(1) Qualified Domestic Relations Orders. Paragraph 15.4(a) shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined by the Plan Administrator to be a Qualified Domestic Relations Order under Code Section 414(p). A domestic relations order entered before January 1, 1985, will be treated as a Qualified Domestic Relations Order if payment of benefits pursuant to the order has commenced as of such date, and may be treated as a Qualified Domestic Relations Order if payment of benefits has not commenced as of such date, even though the order does not satisfy the requirements of Code Section 414(p).

(2) Certain Offsets Permitted. Paragraph 15.4(a) shall not apply to any offset of a participant's benefits provided under the Plan

against an amount the participant is ordered or required to pay to the Plan pursuant to a judgment, order, decree or settlement agreement described in Code Section 401(a)(13)(C) or ERISA Section 206(d)(4). This subparagraph 15.4(b)(2) shall be effective with respect to judgments, orders, and decrees issued, and settlement agreements entered into, on or after August 5, 1997.

15.5 Qualified Domestic Relations Orders

Distribution of any benefit payable to an alternate payee under a Qualified Domestic Relations Order shall be made or commence at such time as the Qualified Domestic Relations Order provides, but not before the earlier of the date the Participant has a severance from employment with the Participating Company and all Related Companies, or the date the Participant attains age 50.

15.6 Governing Law

The Plan shall be governed and construed in accordance with ERISA and other applicable Federal law and, to the extent not governed by Federal Law, by the laws of the Commonwealth of Pennsylvania. Any reference herein to any section of the Federal Internal Revenue Code, ERISA or any other statute or law shall be deemed to include any successor statute.

15.7 Incapacitated Participant or Beneficiary

If the Plan Administrator deems any person to be incapable of receiving any benefit to

which he may be entitled by reason of minority, illness, infirmity, or other incapacity, the Plan Administrator may direct the Trustee to make payment to such person's legally appointed guardian, or other legal representative of such person, or in the absence of a guardian or legal representative, to a custodian for such person under a Uniform Gifts to Minors Act or to any relative of such person by blood or marriage, for such person's benefit. Such payments shall, to the extent thereof, discharge the liability of CIGNA Corporation, any Related Company, the Plan Administrator, the Named Fiduciary, any other fiduciary, the Trustee, and the Trust.

15.8 Non-Liability of the Employer

CIGNA Corporation and the Related Companies do not guarantee the Trust, Participants, former Participants, or Beneficiaries against loss of or depreciation in value of any right or benefit that any of them may acquire under the terms of this Plan. In addition, CIGNA Corporation and Related Companies do not guarantee any of the foregoing that the assets of this Plan will be sufficient to provide any or all of the benefits payable under this Plan at any time, including such time that the Plan may be terminated or partially terminated. All of the benefits payable hereunder shall be paid or provided for solely from the Trust or, as applicable, the Pension Benefit Guaranty Corporation and, CIGNA Corporation, the other Participating Companies and the other Related Companies in

their role as employers do not assume any liability or responsibility whatsoever therefor.

15.9 Expenses

The reasonable expenses incident to the management and operation of the Plan, including the compensation of the Plan actuary, legal counsel, advisors, investment managers, if any, and such other technical and clerical assistance as may be required, shall be payable out of the Trust; provided, however, that CIGNA Corporation, in its absolute discretion, may elect at any time to pay part or all thereof directly, and any such election shall not bind CIGNA Corporation as to its right to elect with respect to the same or other expenses at any other time to have such expenses paid from the Trust.

15.10 Qualified Military Service

Notwithstanding any provision of the Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

ARTICLE XVI– Effect of Top-Heavy Status

16.1 Effect of Top-Heavy Status

If the Plan is or becomes a Top-Heavy Plan in any Plan Year beginning after December 31, 1983, the provisions of this Article XVI shall supersede any conflicting provisions in the Plan.

16.2 Top-Heavy Definitions

The following definitions apply to the provisions of this Article XVI:

(a) "Required Aggregation Group" means, with respect to any Plan Year:

(1) each defined benefit plan and each defined contribution plan of the Participating Companies or any Related Company in which a Key Employee participates in any Plan Year included in the Determination Period; and

(2) each other defined benefit plan and each other defined contribution plan of the Participating Companies or any Related Company which, during the Determination Period, enables any defined benefit plan or defined contribution plan described in subparagraph 16.2(a)(1) to meet the requirements of Code Section 401(a)(4) or Section 410(b).

(b) "Permissive Aggregation Group" means, with respect to any Plan Year, the Required Aggregation Group plus any other defined benefit plan or defined contribution plan which the Participating Companies elect to include, provided such Permissive Aggregation Group meets the requirements of Code Section 401(a)(4) and Section 410(b) with such defined benefit plan or defined contribution plan being taken into account.

(c) "Determination Date" means, with respect to any Plan Year, the last day of the preceding Plan Year.

(d) "Determination Period" means the Plan Year containing the Determination Date and the four preceding Plan Years.

(e) "Key Employee" means any Employee or former Employee (and the beneficiaries of such Employee) who at any time during a Plan Year included in the Determination Period was:

(1) An officer of a Participating Company or a Related Company having annual compensation (as defined in Code Section 414(q)(4)) greater than 50% of the amount in effect under Code Section 415(b)(1)(A) for such Plan Year;

(2) One of the ten Employees having annual compensation (as defined in Code Section 414(q)(4)) from the Participating Companies and Related Company for a Plan Year greater than the amount in effect under Code Section 415(c)(1)(A) for such Plan Year and owning (or considered as owning within the meaning of Code Section 318) both more than a 1/2% interest and the largest interests in a Participating Company or any Related Company;

(3) A five-percent owner of a Participating Company or a Related Company; or

(4) A one-percent owner of a Participating Company or a Related Company having annual compensation (as defined in Code Section 414(q)(4)) from the Participating Companies and the Related Company for a Plan Year of more than $150,000.

For purposes of subparagraph 16.2(e)(1), no more than 50 Employees (or, if less, the greater of three or 10% of the Employees) shall be treated as officers. The determination of who is a Key Employee shall be made in accordance with Code Section 416(i) and regulations thereunder.

(f) "Non-Key Employee" means any Employee who is not a Key Employee.

(g) "Top-Heavy Plan" means, for any Plan Year beginning on or after January 1, 1984, this Plan, if:

(1) This Plan is not part of a Required or Permissive Aggregation Group, and the Top-Heavy Ratio for the Plan exceeds 60%; or

(2) This Plan is part of a Required Aggregation Group which is not part of a Permissive Aggregation Group, and the Top-Heavy Ratio for the Required Aggregation Group exceeds 60%; or

(3) This Plan is part of a Required Aggregation Group and of a Permissive Aggregation Group, and the Top-Heavy Ratio for the Permissive Aggregation Group exceeds 60%.

(h) "Top-Heavy Ratio" means a fraction. The numerator of the fraction is the sum of the present Equivalent Actuarial Values of accrued benefits of all Key Employees under all defined benefit plans in the Required or Permissive Aggregation Group of which this Plan is a part (hereinafter the "Aggregation Group"), plus the sum of the account balances of all Key Employees under all defined contribution plans in the Aggregation Group, as of the Determination Date or, in the case of a plan other than this Plan, the determination date under such other plan which falls within the same calendar year as the Determination Date. The denominator of the fraction is a similar sum determined for all Employees. For purposes of determining the fraction, the numerator and denominator shall include any part of any accrued benefit or account balance distributed in the Determination Period. With respect to Plan Years beginning after December 31, 1984, if any individual has not been credited with at least one Hour of Service with the Participating Companies or any Related Company at any time during the Determination Period, any cumulative benefit for such individual shall not be taken into account.

For purposes of the preceding paragraph, the present Equivalent Actuarial Values of accrued benefits and the sum of account balances shall be determined as of the most recent valuation date that falls within the twelve-month period ending on

the Determination Date. The present Equivalent Actuarial Values of accrued benefits shall be calculated using the Applicable Interest Rate and using the mortality assumptions set forth in section 1.23. The same actuarial assumptions shall be used in the case of all defined benefit plans which are being tested to determine the Top-Heavy Ratio of the Aggregation Group. The calculation of the Top-Heavy Ratio shall be made in accordance with Code Section 416 and the regulations thereunder.

Solely for the purpose of determining if the Plan, or any other plan included in a Required Aggregation Group of which this Plan is a part, is a Top Heavy Plan, the accrued benefit of any Employee other than a Key Employee shall be determined under (i) the method, if any, that uniformly applies for accrual purposes under all plans maintained by the Participating Companies and Related Company or (ii) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional accrual method of Code Section 411(b)(1)(C).

(i) Valuation Date. The valuation date for this Plan is December 31 of each Plan Year.

16.3 Minimum Accrued Benefit

For any Plan Year in which this Plan is a Top-Heavy Plan, each Participant who is a Non-Key Employee shall accrue the greater

of the benefit provided under Article V or the minimum annual benefit described in this section 16.3. Each Non-Key Employee who has 1,000 Hours of Service during a Plan Year shall receive this minimum accrual regardless of his level of compensation and regardless of whether he is employed on the last day of the Plan Year. The amount of such minimum annual benefit, expressed in the form of a single life annuity (with no ancillary benefits) payable at Normal Retirement Age, shall be equal to the product of (i) two percent of the Participant's average Limitation Compensation during his five highest-paid consecutive calendar years of employment (not including any year beginning after the last Plan Year in which the Plan is a Top-Heavy Plan), multiplied by (ii) each of his first ten Years of Credited Service in which the Plan is a Top-Heavy Plan for any Plan Year ending during such Year of Credited Service. A Participant whose accrued benefit is at least 20% of his average Limitation Compensation during such five highest-paid consecutive years shall not accrue any additional benefit under this section 16.3.

16.4 Vesting

For any Plan Year in which this Plan is a Top-Heavy Plan, the following vesting schedule shall automatically apply in determining the vested percentage of the accrued benefit of each Participant who has an Hour of Service in such Plan Year:

Years of Vesting Service	Percent Vested
2	20%
3	40%
4	60%
5	100%

If the Plan becomes a Top-Heavy Plan and subsequently ceases to be such, the vesting schedule in this section 16.4 shall continue to apply in determining the vested percentage of any Participant who had at least three Years of Vesting Service as of December 31 of the last Plan Year in which the Plan was a Top-Heavy Plan. For other Participants, such schedule shall apply only to their accrued benefits as of such December 31.

16.5 Impact on Maximum Benefits

For any Plan Year in which this Plan is a Top-Heavy Plan, paragraphs 6.3(d) and 6.3(f) shall be read by substituting the number "1.0" for the number "1.25" wherever such number appears therein. Notwithstanding the foregoing, this section 16.5 shall not apply with respect to any Limitation Year beginning after December 31, 1999.

CIGNA CORPORATION herewith causes this amended and restated Part B to be executed on the 21st day of December, 1998, by its duly authorized officer.

ATTEST: CIGNA CORPORATION

Trial Exhibit 2

CIGNA PENSION PLAN

(Amended and Restated Effective January 1, 1989; and Further Amended Effective as of July 26, 1989, September 1, 1992 and December 31, 1993)

RECITALS

As of the dates shown below, Aetna Insurance Company, Connecticut General Life Insurance Company, and INA Corporation or their respective predecessors established programs for providing retirement benefits and other benefits for certain of their employees and their beneficiaries and certain employees of their participating subsidiaries and affiliates (the "Prior Plans").

Aetna Insurance Company Retirement Plan ("Aetna Plan") - August 1, 1934

Connecticut General Life Insurance Company Retirement Plan ("CG Plan") - January 1, 1933

United States Pension Plan of INA Corporation and Affiliated Companies ("INA Plan") - October 27, 1943

Effective as of January 1, 1983, the Aetna Plan and CG Plan were merged into the INA Plan, and the INA Plan was amended and restated in its entirety as the United States Pension Plan of CIGNA Corporation and Affiliated Companies and is hereinafter referred to as the "Plan". The Plan is a continuation of the Prior Plans.

Effective as of January 1, 1989, the Plan is hereby amended and restated in compliance with the Tax

Reform Act of 1986 and other recent laws and regulations, and a new, separate benefit accrual formula is adopted for employees whose service commences after December 31, 1988, and for certain other employees described in the Plan.

Effective January 1, 1991, the Pension Plan of CIGNA Healthplan, Inc. (the "CHP Plan") was merged into this Plan, and the CHP Plan became a Prior Plan.

Effective as of September 1, 1992, the Plan is hereby renamed as the CIGNA Pension Plan.

Effective as of December 31, 1993, the Plan is hereby amended to change from the elapsed time method of counting service to the "hours of service" method; to permit certain Participants whose employment is affected by a sale of the assets or stock of a Participating Company to be treated as having separated from service; and to provide special accelerated vesting rights to certain of such Participants.

No provisions of this Plan shall operate to diminish or adversely affect the amount or terms of retirement benefits accrued in respect to a Participant's coverage under the Prior Plan or Plans.

It is the intent of CIGNA Corporation that the Plan shall be established and maintained as a qualified retirement Plan which is in full compliance with ERISA and the terms of Section 401(a) of the Internal Revenue Code of 1986, as amended from time to time.

CONTENTS

Title		Page Number
Recitals		i
Contents		iii
Article I - Definitions		1
1.1	"Aetna Plan"	1
1.2	"Accrued Benefit"	1
1.3	"Acquired Entity"	1
1.4	"Actuary"	1
1.5	"Adjusted Retirement Benefit"	1
1.6	"Adjustment Factor"	1
1.7	"Agent"	1
1.8	"Applicable Interest Rate	2
1.9	"Beneficiary"	2
1.10	"Benefit Commencement Date"	2
1.11	"Benefit Credit Computation Period"	2
1.12	"Board of Directors"	2
1.13	"CG Plan"	2
1.14	"CHP Plan"	2
1.15	"Change of Control"	2
1.16	"Chief Executive Officer"	3
1.17	"Code"	3
1.18	"Committee"	3
1.19	"Computation Period"	3
1.20	"Credited Interest"	3
1.21	"Credited Service"	3
1.22	"Early Retirement Date"	3
1.23	"Eligible Earnings"	3
1.24	"Eligible Employee"	6
1.25	"Eligible Service"	7
1.26	"Employee"	7
1.27	"Employee Accrued Benefit"	8

1.28	"Employment Commencement Date"	8
1.29	"Equivalent Actuarial Value"	8
1.30	"ERISA"	8
1.31	"Final Average Eligible Earnings"	8
1.32	"Frozen Accrued Benefit	9
1.33	"Fund"	9
1.34	"Group Annuity Contract(s)"	9
1.35	"Hour of Service"	9
1.36	"INA Plan"	11
1.37	"Initial Eligibility Computation Period"	11
1.38	"New Formula Participant"	11
1.39	"Normal Retirement Age"	11
1.40	"Normal Retirement Date"	11
1.41	"One-Year Break in Service"	12
1.42	"PEG Plan"	12
1.43	"Parental Absence"	12
1.44	"Participant"	12
1.45	"Participating Company"	13
1.46	"PBGC"	13
1.47	"Period of Severance"	13
1.48	"Plan"	13
1.49	"Plan Administrator"	13
1.50	"Plan Year"	13
1.51	"Prior Plan or Plans"	13
1.52	"Prior Service"	13
1.53	"Qualified Annuity"	14
1.54	"QJSA"	14
1.55	"Qualified Domestic Relations Order"	14
1.56	"Reemployment Commencement Date"	14
1.57	"Related Company"	14
1.58	"Required Employee Contributions"	24
1.59	"Restatement Date"	15

1.60	"Retirement"	15
1.61	"Retirement Date"	15
1.62	"Section 401(a)(17) Participant	15
1.63	"Severance from Service Date"	15
1.64	"Spouse"	15
1.65	"Subsequent Eligibility Computation Period"	16
1.66	"TEFRA"	16
1.67	"Termination for Cause"	16
1.68	"Trust"	16
1.69	"Trustee"	16
1.70	"Ultimate Retirement Benefit"	16
1.71	"Vesting Computation Period"	16
1.72	"Vesting Service"	16
1.73	"Voluntary Deductible Employee Contributions" And "Deductible Contributions"	16
1.74	"Voluntary Non-Deductible Employee Contributions"	16
1.75	"Year of Credited Service"	17
1.76	"Year of Eligible Service"	17
1.77	"Year of Vesting Service"	17
Article II - Participation in the Plan		18
2.1	Commencement of Participation	18
2.2	Active Participation	18
2.3	Suspended Participation	18
2.4	Resumption of Participation Upon Re-Employment	18
Article III - Service		20
3.1	Service - General	20
3.2	Eligible Service (Effective December 31, 1993)	21
3.3	Credited Service (Effective December 31, 1993)	24

3.4	1983 Transition Period	26
3.5	Military Service	26
3.6	Hours of Service Method (Effective December 31, 1993)	27
3.7	Eligible Service (Effective December 31, 1993)	27
3.8	Vesting Service (Effective December 31, 1993)	27
3.9	Credited Service (Effective December 31, 1993)	28
3.10	Special Service Counting Rules (Effective December 31, 1993)	29
Article IV - Retirement Benefits		32
4.1	General	32
4.2	Normal Retirement Benefits	33
4.3	Early Retirement Benefits	36
4.4	Termination Benefits	39
4.5	Minimum Retirement Benefits	42
4.6	Sale of Assets or a Subsidiary	43
4.7	Special Provision for Section 401(a)(17) Participants	44
4.8	Transfer of a Participant to or from Ross-Loos Pension Plan	44
Article V - Maximum Retirement Benefits		46
5.1	Combined Plans Maximum Benefit	46
5.2	Statutory Maximum Retirement Benefit Limitations	46
5.3	Participation in One or More Defined Contribution Plans	48
5.4	Definitions Applicable to Sections 5.2 and 5.3	49
5.5	Aggregation Rules	52
5.6	Discrepancy With Code	52

Article VI - Forms of Benefits; Distribution Requirements		53
6.1	Normal Form -- Single Life Annuity	53
6.2	Qualified Annuity	53
6.3	Optional Forms of Retirement Benefits	55
6.4	Preserved Spouse's Benefit	56
6.5	Suspension of Payments to Re-employed Retirees	57
6.6	Requirements Concerning Distributions	58
6.7	Special Rule for Former Participants of the PEG Plan	62
6.8	Small Benefits (Effective September 1, 1992)	62
6.9	Direct Rollovers	63
Article VII - Surviving Spouse Benefits		65
7.1	Qualified Preretirement Survivor Annuity	65
7.2	Preserved Surviving Spouse Benefits - Pre-1985 Eligible Service	67
7.3	Preserved Surviving Spouse Benefit - 1985 to 1988 Eligible Service	69
7.4	Special Spouse Benefit for INA Plan Participants	71
7.5	Special Post-65 Spouse Benefit For INA Plan Participants	72
7.6	Death of Spouse	73
Article VIII – Vesting		74
8.1	Vesting of Benefits	74
8.2	Forfeitures	75

Article IX - Death Benefits and Beneficiary Provisions (OTHER THAN SURVIVING SPOUSE BENEFITS CONTAINED IN ARTICLE VII) 76
9.1 Death Before Benefit Commencement Date 76
9.2 Death On or After Benefit Commencement Date 76
9.3 Beneficiary 77

Article X - Funding 78
10.1 Contributions 78
10.2 Time of Contributions 78
10.3 Contributions Irrevocable -- Limited Refunds 78
10.4 Use of Forfeitures 79

Article XI - Participant Contributions 80
11.1 Participant Contributions in General 80
11.2 Required Employee Contributions to the Aetna and CG Plans 80
11.3 Required Employee Contributions to the PEG Plan 81
11.4 Voluntary Non-Deductible Employee Contributions 81
11.5 Vesting in Participant Contributions 82
11.6 Forms of Payment 82

Article XII - Voluntary Deductible Employee Contributions 84
12.1 Definitions 84
12.2 Eligibility and Participation 84
12.3 Voluntary Deductible Employee Contributions 84

12.4 Cancellation of Deductible Contributions 85
12.5 Annuity Contract 85
12.6 Participant's Account 85
12.7 Reports to Plan Administrator and Participants 86
12.8 Vested Interest 86
12.9 Withdrawal of Deductible Contributions 86
12.10 Distribution of Benefits 86

Article XIII - Trust 87
13.1 Trust Agreement 87
13.2 Payment Through Trustee 87
13.3 Trustee-To-Trustee Transfers and Tax-Free Rollovers 87

Article XIV - Fiduciary Responsibility Provisions 89
14.1 Corporate Benefit Plan Committee 89
14.2 Role of Committee 89
14.3 Multiple Fiduciary Capacity 89
14.4 Delegation and Allocation of Fiduciary Responsibilities 89
14.5 Appointment of Committee Members 90
14.6 Resignation and Termination of Employment of Fiduciary 90
14.7 Limitation of Guarantees on Investments 90

Article XV - Plan Administration 91
15.1 Appointment and Acceptance 91
15.2 Duties and Authority; Discretionary Authority 91
15.3 Expenses and Assistance 92

15.4	Participants and Other Payees - Data	92
15.5	Claims Procedure	92
15.6	Clerical Error	94
Article XVI - Amendment and Termination		95
16.1	Amendment	95
16.2	Termination or Partial Termination	96
16.3	Limitations re Highly Compensated Employees	98
16.4	Withdrawal from Participation	99
16.5	Change of Control (Effective until July 26, 1989)	100
16.6	Change of Control (Effective July 26, 1989)	103
16.7	Amendment of CHP Plan	107
Article XVII - Miscellaneous		108
17.1	Limitation of Rights; Employment Relationship	108
17.2	Reorganization; Transfer of Assets	108
17.3	Construction	109
17.4	Non-Assignment	109
17.5	Governing Law	109
17.6	Incapacitated Participant or Beneficiary	110
17.7	Non-Liability of the Employer	110
17.8	Expenses	110
Article XVIII - Top-Heavy Provisions		111
18.1	Effect of Top-Heavy Status	111
18.2	Top-Heavy Definitions	111
18.3	Minimum Accrued Benefit	113
18.4	Compensation Limitation	114
18.5	Vesting	114
18.6	Impact on Maximum Benefits	114

Appendix: ACTUARIAL FACTORS
Table A 116
Table B 117
Table C 118

CIGNA PENSION PLAN

(Amended and Restated Effective January 1, 1989;

and Further Amended Effective as of July 26, 1989,

September 1, 1992 and December 31, 1993)

Article I - Definitions

The following defined terms are indicated by the capitalized initial letters wherever they appear in the Plan.

1.1 "Aetna Plan" shall mean the Aetna Insurance Company Retirement Plan in effect on December 31, 1982.

1.2 "Accrued Benefit" shall mean the yearly retirement income commencing as of the Participant's Normal Retirement Date as determined in accordance with the terms of the Plan.

1.3 "Acquired Entity" shall mean a corporation or unincorporated entity that is acquired by CIGNA Corporation or a Related Company.

1.4 "Actuary" shall mean the enrolled actuary who is appointed to make actuarial determinations or certifications for the Plan.

1.5 "Adjusted Retirement Benefit" shall mean the yearly retirement benefit payable in a level amount for life which is the Equivalent Actuarial Value of the yearly retirement benefit payable in two different amounts, as described in section 4.3. Such Adjusted Retirement Income equals (a) plus (b) where:

(a) Is the yearly retirement benefit payable on and after the Participant's Normal Retirement Date, as described in such section, and

(b) Is the excess of the yearly retirement benefit payable prior to the Participant's Normal Retirement Date, as described in such Section, over the yearly retirement benefit defined in paragraph 1.5(a) above, multiplied by the actuarial factor appropriate under section 1.28 for converting such temporary retirement income to a retirement income payable for life.

1.6 "Adjustment Factor" shall mean the cost of living adjustment factor prescribed by the Secretary of the Treasury under Code Section 415(d) for years beginning after December 31, 1987, as applied to such items and in such manner as the Secretary shall prescribe.

1.7 "Agent" shall mean an Employee who is not an independent contractor and who is engaged in selling a Related Company's products. Effective January 1, 1993, "Agent" shall also mean any independent contractor who is a full-time life insurance salesman who qualifies under Code Section 3121(d)(3)(B) as an employee of a CIGNA Corporation life insurance company subsidiary.

1.8 "Applicable Interest Rate" shall mean the interest rate or rates which would be used as of the first day of the Plan Year which includes the Benefit Commencement Date by the PBGC for purposes of determining the present value of the particular benefits under the Plan if the Plan had then terminated with insufficient assets to provide benefits guaranteed by the PBGC on that date.

1.9 "Beneficiary" shall mean the person or persons entitled under the provisions of this Plan to receive benefits after the death of a Participant.

Unless a Participant designates otherwise, his Beneficiary shall be his qualifying surviving Spouse or, if there is none, the personal representative of the Participant's estate.

1.10 "Benefit Commencement Date" shall mean the first day of the first period for which an amount is paid as an annuity or in any other form.

1.11 "Benefit Credit Computation Period" shall mean, effective December 31, 1993, the Plan Year, beginning with the Plan Year which includes an Employee's Employment Commencement Date (or Reemployment Commencement Date) and succeeding Plan Years.

1.12 "Board of Directors" shall mean the Board of Directors of CIGNA Corporation.

1.13 "CG Plan" shall mean the Connecticut General Life Insurance Company Retirement Plan in effect on December 31, 1982.

1.14 "CHP Plan" shall mean the Pension Plan of CIGNA Healthplan, Inc., in effect on December 31, 1990.

1.15 "Change of Control" shall mean:

(a) A corporation, person or group acting in concert as described in Section 14(d)(2) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), holds or acquires beneficial ownership within the meaning of Rule 13d-3 promulgated under the Exchange Act of a number of preferred or common shares of CIGNA Corporation having voting power which is either (1) more than 50% of the voting power of the

shares which voted in the election of directors of CIGNA Corporation at the shareholders' meeting immediately preceding such determination, or (2) more than 25% of the voting power of CIGNA Corporation's outstanding common shares; or

(b) As a result of a merger or consolidation to which CIGNA Corporation is a party, either (1) CIGNA Corporation is not the surviving corporation or (2) directors of CIGNA Corporation immediately prior to the merger or consolidation constitute less than a majority of the board of directors of the surviving corporation; or

(c) A change occurs in the composition of the Board of Directors at any time during any consecutive 24 month period such that the "Continuity Directors" cease for any reason to constitute a majority of the Board. For purposes of the preceding sentence "Continuity Directors" shall mean those members of the Board who either: (1) were directors at the beginning of such consecutive 24 month period; or (2) were elected by, or on nomination or recommendation of, at least a majority (consisting of at least nine directors) of the Board.

1.16 "Chief Executive Officer" shall mean the Chief Executive Officer of CIGNA Corporation.

1.17 "Code" shall mean the Internal Revenue Code of 1986, as amended.

1.18 "Committee" shall mean the CIGNA Corporation Corporate Benefit Plan Committee, or a successor entity or group of persons, that is the

Named Fiduciary for the Plan as described in Article XIV.

1.19 "Computation Period" shall mean a Benefit Credit Computation Period, Eligibility Computation Period and/or Vesting Computation Period.

1.20 "Credited Interest" shall mean interest for the number of full months from January 1 following the date each such contribution was made under the Aetna Plan or the CG Plan to the date or dates specified in this Plan. Provisions for those Required Contributions and this Credited Interest are contained in Article XI of this Plan.

1.21 "Credited Service" shall mean:

(a) until December 31, 1993, the periods described in section 3.3; and

(b) from and after December 31, 1993, the periods described in section 3.9.

1.22 "Early Retirement Date" shall mean the first day of the month following the Retirement of a Participant who is eligible for early retirement benefits under section 4.3.

1.23 "Eligible Earnings" shall mean those elements of compensation which are paid to an Eligible Employee by a Participating Company as established by the payroll or personnel records of the Participating Company.

(a) Eligible Earnings shall include the following compensation elements:

(1) For an Eligible Employee who is paid on a salaried basis, a salary plus bonus basis, or an hourly basis:

a. The Employee's base salary or other base compensation;

b. Current cash incentive or performance bonuses;

c. Overtime or shift premium pay; and

d. Commissions or sales compensation, but not those amounts which are eligible earnings for either a defined contribution pension or a defined benefit pension plan (other than this Plan) sponsored by CIGNA Corporation or a Participating Company;

(2) For an Eligible Employee whose compensation is based upon an earnings or compensation formula which is only partly in the form of a salary rate, the total compensation paid to him under his employment, earnings or compensation agreement except those earnings excluded in paragraph 1.23(b);

(3) For an Eligible Employee participating in either the Savings and Investment Plus Plan, or any successor plan containing a qualified cash or deferred arrangement under Code Section 401(k), or a cafeteria plan under Code Section 125, contributions made by the Participating Company under such plans on behalf of the Eligible Employee pursuant to his deferral election under the qualified cash or deferral arrangement (but not employer matching contribu-

tions) or a benefit election under the cafeteria plan;

(4) For an Eligible Employee during any paid or unpaid leave of absence authorized by a Participating Company, the Eligible Employee's base salary amount or guaranteed compensation formula earnings at the time the leave began shall be presumed to continue for the duration of the leave; and

(5) Other types of compensation determined by the Plan Administrator in a uniform and non-discriminatory manner to be similar to the types of compensation listed in this paragraph 1.23(a).

(b) All other types of compensation are not Eligible Earnings. Earnings which are not Eligible Earnings include, but are not limited to:

(1) Compensation voluntarily deferred by the Eligible Employee, either when deferred or when subsequently paid (except as provided in subparagraph 1.23(a)(3));

(2) Any amounts earned or accrued while an Employee, but paid after termination of employment;

(3) Expense reimbursements or allowances;

(4) Payments and awards for suggestions, employment referral, reloca-

tion, educational achievements or similar awards;

(5) Cash or cash values paid under a long term executive compensation plan including, but not limited to, stock grants, stock options and/or stock appreciation rights;

(6) The cash value of merchandise or similar awards;

(7) The imputed taxable value of merchandise, employee benefits, including company automobiles and other fringe benefits, or similar items;

(8) Lump sum payments for unused time off;

(9) Salary, commissions or other income which is eligible earnings in a defined contribution pension or defined benefit pension plan of CIGNA Corporation or a Participating Company (but not this Plan or a supplemental profit sharing or matched savings plan);

(10) Current cash incentive or other bonuses, overtime, shift or similar premium pay paid before January 1, 1983 to the Participant in respect to a period of Credited Service in the INA Plan prior to that date and commissions paid by CIGNA Securities, Inc., before January 1, 1988; and

(11) Other compensation which may be either similar or dissimilar to that excluded under this paragraph 1.23(b) but which is not included in Eligible

Earnings under paragraph 1.23(a) by the Plan Administrator on a uniform, non-discriminatory basis.

In addition to other applicable limitations which may be set forth in the Plan and notwithstanding any other contrary provision of the Plan, "Eligible Earnings" shall not exceed $200,000, multiplied by the Adjustment Factor as provided by the Secretary of the Treasury, for the purpose of calculating a Participant's accrued benefit (including the right to any optional benefit provided under the Plan) for any Plan Year commencing after December 31, 1988 and before January 1, 1994. However, the accrued benefit determined in accordance with this provision shall not be less than the accrued benefit determined on March 31, 1989, without regard to this provision. Notwithstanding the preceding sentence, the accrued benefit of any Participant who is a highly compensated employee, within the meaning of Section 414(q) of the Code, is reduced to the extent a benefit has accrued with respect to compensation in excess of $200,000 during the 1989 Plan Year before March 30, 1989.

With respect to benefits accruing after December 31, 1993, "Eligible Earnings" shall not include the amount of any annual compensation received by a Participant which exceeds $150,000, as adjusted by the Commissioner of Internal Revenue for increases in the cost of living in accordance with Code Section 401(a)(17)(B), as amended by the Omnibus Budget Reconciliation Act of 1993 (the "OBRA '93 limit"). The cost-of-living ad-

justment in effect for a calendar year applies to any period, not exceeding twelve months, over which Eligible Earnings is determined (the "determination period") beginning in such calendar year. If a determination period consists of fewer than twelve months, the OBRA '93 limit shall be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve.

If Eligible Earnings for any prior determination period is taken into account in determining a Participant's benefits accruing in any Plan Year beginning after December 31, 1993, the Eligible Earnings for such prior determination period is subject to the OBRA '93 limit in effect for such prior determination period. For this purpose, for determination periods beginning before January 1, 1994, the OBRA '93 limit is $150,000.

For purposes of the $200,000 limit and the OBRA '93 limit, the family aggregation rules of Code Section 414(q)(6) shall apply, except that in applying such rules, the term "family" shall include only the spouse of the Participant and any lineal descendants of the Participant who have not attained age 19 before the close of the Plan Year. If, as a result of the application of such rules, the $200,000 limit or the OBRA '93 limit is exceeded, then such limit shall be prorated among the affected individuals in proportion to each such individual's Eligible Earnings as determined under this section 1.23 prior to the application of such limitation.

1.24 "Eligible Employee" shall mean each Employee who is employed by CIGNA Corporation or a Participating Company and who works within the United States (including the District of Columbia, Guam, Puerto Rico and the Virgin Islands) or, if he does not work within the foregoing jurisdictions, he is designated by the Plan Administrator as an expatriate Employee who is eligible to participate in the Plan. An Eligible Employee shall not, however, include:

(a) An Employee who belongs to a collective bargaining unit which has entered into a collective bargaining agreement with a Participating Company, unless such agreement specifically provides for coverage of the Employee under this Plan;

(b) An Agent who is accruing a benefit based upon current service and compensation in the Connecticut General Life Insurance Company Agents Retirement Plan, or the Educators Marketing Services Corporation Employees' Money Purchase Pension Plan;

(c) An Employee who is a member of a class of Employees covered by and who is accruing a benefit based upon current service and compensation in a defined contribution or a defined benefit pension plan of CIGNA Corporation or a Participating Company qualified under Code Section 401(a), unless (1) eligibility for this Plan shall be approved by the Board of Directors or (2) the employee is not an Agent but continues to accrue benefits based upon current service and compensation in the Connecti-

cut General Life Insurance Company Agents Retirement Plan;

(d) A leased employee considered an Employee of CIGNA Corporation or a Related Company solely by operation of Code Section 414(n); or

(e) Effective November 15, 1989, a field staff employee or Management Trainee in the Individual Financial Services Division (or successor organization) who was first credited with an Hour of Service after December 31, 1988.

Notwithstanding the foregoing, eligibility for or participation in a supplemental profit sharing or matched savings plan of CIGNA Corporation or a Related Company shall not prevent an Employee from being an Eligible Employee in this Plan.

1.25 "Eligible Service" shall mean

(a) until December 31, 1993, the periods described in section 3.2; and

(b) from and after December 31, 1993, the periods described in section 3.7.

1.26 "Employee" shall mean a common law employee of CIGNA Corporation or a Related Company, and shall include any leased employee within the meaning of Code Section 414(n)(2). Notwithstanding the foregoing, if such leased employees constitute less than 20% of the non-highly compensated work force of CIGNA Corporation and the Related Companies within the meaning of Code Section 414(n)(5)(C)(ii), the term "Employee" shall not include those leased employees covered by a plan described in Code Section 414(n)(5).

1.27 "Employee Accrued Benefit" shall mean that portion of the Participant's accrued benefit from the Plan which is derived from the Participant's Required Employee Contributions to a Prior Plan, as provided for in Article XI.

1.28 "Employment Commencement Date" shall mean the date that an Employee first performs an Hour of Service (within the meaning of 29 CFR S2530.200b-2(a)(1)) for CIGNA Corporation or a Related Company, regardless of the earlier date of any contract or agreement of employment.

1.29 "Equivalent Actuarial Value" shall mean an alternative form of benefit which has the equivalent value to the defined benefit of the Plan as determined by use of the actuarial methods, standards, and tables attached to the Plan, or, except as otherwise hereinafter expressly provided, as determined by the Actuary for the Plan based on the following:

(a) Mortality according to the 1971 Group Annuity Mortality Table for male lives, with ages for Participants setback three (3) years, and

(b) Interest at a rate of 6% per annum.

1.30 "ERISA" shall mean the Employee Retirement Income Security Act of 1974 (P.L. 93-406) as amended from time to time.

1.31 "Final Average Eligible Earnings" shall mean:

(a) For other than New Formula Participants, the greatest of:

(1) the arithmetic average (converted to an annual amount) of the Eligible Earnings of a Participant for the last thirty-six (36) successive months of Credited Service;

(2) The arithmetic average of the Eligible Earnings of a Participant for the highest three (3) successive full calendar years of Credited Service; or

(3) If the Participant has not been compensated for thirty-six (36) successive months of Credited Service, the arithmetic average of the monthly Eligible Earnings of the Participant for the months of Credited Service for which the Participant was compensated, multiplied by twelve (12).

In the event that annual incentive payments for four (4) separate years have been paid during any of the above periods, then only the three (3) most recent payments shall be included in any computation under this provision.

(b) For New Formula Participants, the greatest of:

(1) the arithmetic average (converted to an annual amount) of the Eligible Earnings of a Participant for the last sixty (60) successive months of Credited Service;

(2) The arithmetic average of the Eligible Earnings of a Participant for the highest five (5) successive full calendar years of Credited Service during

the Participant's most recent ten (10) years of Credited Service; or

(3) If the Participant has not been compensated for sixty (60) successive months of Credited Service, the arithmetic average (converted to an annual amount) of the Eligible Earnings of the Participant for the months of Credited Service for which the Participant was compensated.

In the event that annual incentive payments for six or more (6) separate years have been paid during any of the above periods, then only the five (5) most recent payments shall be included in any computation under this provision.

In computing Final Average Eligible Earnings for all Participants, any annual incentive bonus payments under the CIGNA Middle Management Incentive Plan shall be deemed to have been paid on March 31, regardless of the date of actual payment.

1.32 "Frozen Accrued Benefit" shall mean, effective January 1, 1994, a Participant's accrued benefit as of December 31, 1993, frozen in accordance with Treas. Reg. §1.401(a)(4)-13, multiplied by a fraction (not less than one), the numerator of which is the Participant's Final Average Eligible Earnings as of the date of the determination, and the denominator of which is the Participant's Final Average Eligible Earnings as of December 31, 1993, under the provisions of the Plan in effect on such date.

1.33 "Fund" shall mean the fund or funds established for accumulating contributions to and assets of the Plan.

1.34 "Group Annuity Co tract(s)", shall mean the contract or contracts held by the Trustee to fund some or all benefits under this Plan.

1.35 "Hour of Service" shall mean effective December 31, 1993:

(a) Each hour for which an Employee is directly or indirectly paid, or entitled to payment, by CIGNA Corporation or a Related Company for the performance of duties. These hours shall be credited to the Employee for the Computation Period in which the Employee's pay date occurs; and

(b) Each hour for which an Employee is directly or indirectly paid, or entitled to payment, by CIGNA Corporation or a Related Company for reasons (such as vacation, severance, sickness or disability) other than for the performance of duties. Included shall be any hours, but not in excess of 501 hours, for which an Employee receives (1) severance pay under a severance pay plan or arrangement and (2) any payment upon termination of employment for earned but unused vacation days and personal holidays. Hours under this subsection shall be calculated and credited pursuant to §2530.200b-2 of the Department of Labor Regulations which are incorporated herein by this reference;

(c) Each hour for which back pay, irrespective of mitigation of damage, is either awarded

or agreed to by CIGNA Corporation or a Related Company. These hours shall be credited to the Employee for the Computation Period(s) to which the award or agreement pertains rather than the Computation Period in which the award, agreement or payment is made; and

(d) Each hour during an Employee's approved leave of absence, whether paid or unpaid. An Employee classified as "exempt" under the Fair Labor Standards Act shall be credited with 190 Hours of Service for each month of such leave of absence; every other employee shall be credited with the Hours of Service which otherwise would normally have been credited to such individual but for such approved leave of absence, or in any case in which the Plan is unable to make such determination, eight (8) Hours of Service per day of such approved leave of absence.

Each employee classified as "exempt" under the Fair Labor Standards Act shall be credited with 190 Hours of Service for each month in which the Employee would be deemed entitled to credit for any Hour of Service in accordance with paragraph (a), (b) or (c) above. Every other Employee shall be credited with Hours of Service on the basis of the records of CIGNA Corporation or any Related Company for which such Hours of Service shall be performed or shall be deemed creditable in accordance with paragraph (a), (b) or (c) above. In no event shall an Hour of Service be allowed or computed in a manner less liberal than the manner described in §2530-200b-2 of Department of Labor Regulations.

1.36 "INA Plan" shall mean the United States Pension Plan of INA Corporation and Affiliated Companies in effect on December 31, 1982.

1.37 "Initial Eligibility Computation Period" shall mean the 13 consecutive-month period beginning with the first day of the month in which the Employee's Reemployment Commencement Date occurs and ending on the last day of the month in which the first anniversary of such date occurs.

1.38 "New Formula Participant" shall mean a Participant who:

(a) Was credited with his first Hour of Service (or his first Hour of Service after a series of One-Year Breaks in Service which caused him to be treated as a new Employee) under the Plan after December 31, 1988;

(b) Commenced Eligible Service before January 1, 1989, had no Credited Service before January 1, 1989, and became a Participant in this Plan after December 31, 1988, as a result of his employing Related Company becoming a Participating Company after December 31, 1988;

(c) Commenced Eligible Service with any company in the CIGNA Healthplan Division before January 1, 1989, had no Credited Service before January 1, 1989, and became a Participant in this Plan as a result of the merger of the CHP Plan into this Plan;

(d) Was employed by the EQUICOR-Equitable HCA Corporation, or one of its subsidiar-

ies, in March, 1990, had no Credited Service in this Plan before January 1, 1989, and became a Participant in this Plan on January 1, 1991; or

(e) Was employed by Principal Health Care of Ohio, Inc. ("Principal") on November 29, 1994, and became employed by a Participating Company on November 30, 1994, as part of the acquisition of certain assets of Principal in Columbus, Ohio.

1.39 "Normal Retirement Age" shall mean the later of (a) the time a Participant attains age sixty-five (65); or (b) in the case of a Participant who commences participation in the Plan after attaining age sixty (60), the earlier of the fifth (5th) anniversary of the time a Participant commences participation in the Plan or the date on which the Participant completes five (5) years of Eligible Service (effective December 31, 1993, five (5) Years of Vesting Service).

1.40 "Normal Retirement Date" shall mean the first day of the month following Retirement of a Participant who is eligible for a Normal Retirement Benefit described in Article IV of the Plan.

1.41 "One-Year Break in Service" shall mean, with respect to any Employee:

(a) Until December 31, 1993, a twelve (12) consecutive month Period of Severance; and

(b) From and after December 31, 1993, any Vesting Computation Period during which the Employee is credited with 500 or fewer Hours of Service. Solely for purposes of determining whether a One-Year Break in

Service has occurred, "Hour of Service" shall also mean, in addition to the hours determined under section 1.35, each hour (up to a maximum of 501 hours in a single continuous period) for which an Employee is absent because of a Parental Absence. The number of Hours of Service credited under this section 1.41 shall be the number of Hours of Service which would otherwise have been credited to such Employee but for such absence, or, in any case in which such Hours of Service cannot be determined, eight Hours of Service per day of such absence. These hours shall be credited in the Vesting Computation Period in which the Parental Absence begins, if the Employee would otherwise incur a One-Year Break in Service in such Period. In all other cases, these hours shall be credited in the following Vesting Computation Period.

1.42 "PEG Plan" shall mean the Pacific Employers Group Pension Plan prior to January 1, 1968 when that plan was merged into the INA Plan.

1.43 "Parental Absence" shall mean any period an Employee is absent from work because of: the Employee's pregnancy, the birth of the Employee's child or the placement of a child with the Employee in connection with the Employee's adoption of the child, or the Employee's caring for the child for a period beginning immediately after the birth or placement; provided that no absence shall be considered to be a Parental Absence unless the Employee shall furnish to the Plan Administrator such timely information as the Plan Administrator may reasonably require

to establish that the absence from work was for reasons set forth in this section 1.43 and the number of days for which there was such an absence.

1.44 "Participant" shall mean each Employee who is, or has been, an Eligible Employee and has thus become a Participant in the Plan as determined under Article II and who, at the relevant time, is an Employee. A Participant may be in an active or suspended status in the Plan.

1.45 "Participating Company" shall mean CIGNA Corporation and each Related Company which has been authorized by the Board of Directors or the People Resources Committee of the Board of Directors (or by a duly authorized officer of CIGNA Corporation) to participate in the Plan and which, by resolution of the Related Company's board of directors, has adopted the Plan and has agreed to comply with its provisions.

1.46 "PBGC" shall mean the Pension Benefit Guaranty Corporation, a public corporation within the Department of Labor established pursuant to Title IV of ERISA.

1.47 "Period of Severance" shall mean the period of time commencing on the Severance from Service Date and ending on the date on which an Employee again performs an Hour of Service as defined in paragraph 1.35(a).

Notwithstanding the foregoing, in the case of an Employee who is absent from work for a Parental Absence, the Period of Severance shall begin on the second anniversary of the first date on which the Employee was absent for such reason. The

period between the first and second anniversaries of the first date of such absence is neither Eligible Service (or Credited Service) nor a Period of Severance.

1.48 "Plan" shall mean the United States Pension Plan of CIGNA Corporation and Affiliated Companies (effective September 1, 1992, renamed the CIGNA Pension Plan), a defined benefit pension plan, as set forth herein and as amended from time to time.

1.49 "Plan Administrator" shall mean the person, entity, or committee responsible for the administration of the Plan as specified in Article XV.

1.50 "Plan Year" shall mean the calendar year.

1.51 "Prior Plan or Plans" shall mean the Aetna Plan, the CG Plan and the INA Plan (and as of January 1, 1991, the CHP Plan) (including any plans previously merged into any of them), collectively or individually as the context may require.

1.52 "Prior Service" shall mean, effective December 31, 1993, that period of service an individual who was employed by an Acquired Entity on the acquisition date had accumulated as of such date under the provisions of any Acquired Entity qualified pension plan or, if there are no such plans, the period of such individual's employment with the Acquired Entity beginning with the last date that the individual first performed an Hour of Service within the meaning of 29 CFR §2530.200b-2(a)(1) for the acquired corporation or entity and ending with the acquisition date.

1.53 "Qualified Annuity" shall mean the Qualified Annuity described in paragraph 6.2(a).

1.54 "QJSA" shall mean the Qualified Annuity described in subparagraph 6.2(a)(2) with a 50% survivor annuity for the Participant's Spouse.

1.55 "Qualified Domestic Relations Order" shall mean a qualified domestic relations order as defined in Code Section 414(p).

1.56 "Reemployment Commencement Date" shall mean

(a) until December 31, 1993, the first date following a Period of Severance which is not required to be included as Eligible Service under paragraph 3.2(d)(1) or (2) on which an Employee first performs an Hour of Service (within the meaning of 29 CFR §2530.200b-2(a)(1)) for CIGNA Corporation or a Related Company; and

(b) from and after December 31, 1993, the first date on which an Employee completes an Hour of Service for CIGNA Corporation or a Related Company following a One-Year Break in Service. The term "Reemployment Commencement Date" shall be applied with respect to any Employee who has had a Break in Service whether or not such Employee's employment has actually been deemed terminated.

1.57 "Related Company" shall mean any corporation which is a member of a controlled group of corporations, as defined in Code Section 414(b), of which CIGNA Corporation is a member, including an insurance company subject to tax under Code Section 801; any other trade or business

which is under common control, as defined in Code Section 414(c), with CIGNA Corporation; any trade or business which is a member of an affiliated service group, as defined in Code Section 414(m), of which CIGNA Corporation is a member; and any other entity required to be aggregated with CIGNA Corporation pursuant to regulations under Code Section 414(o). For purposes of applying Code Section 414(b) and (c) to the limitations on benefits set forth in Article V, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in Code Section 1563(a)(1).

1.58 "Required Employee Contributions" shall mean those employee contributions required as a condition of participation in the Aetna Plan before January 1, 1956, or in the CG Plan before June 1, 1974, which are the effective dates upon which those plans became non-contributory and/or those employee contributions required as a condition of participation in the PEG Plan prior to its merger into the INA Plan.

1.59 "Restatement Date" shall mean January 1, 1989, the date this restated version of the Plan is effective; however, particular Plan provisions, as specified herein, have other effective dates.

1.60 "Retirement" shall mean a Participant's termination of employment with CIGNA Corporation or a Related Company at a time that he is immediately eligible for retirement benefits under Article IV. For purposes of this definition, actual receipt of retirement benefits is not necessary; it is only necessary that the Participant be eligible to receive retirement benefits.

1.61 "Retirement Date" shall mean the first day of the month following the Retirement of a Participant.

1.62 "Section 401(a)(17) Participant" shall mean, effective January 1, 1994, a Participant whose accrued benefit as of any date on or after January 1, 1994, is based on compensation for a Plan Year beginning prior to January 1, 1994, that exceeded $150,000.

1.63 "Severance from Service Date" shall mean the date which is the earlier of:

(a) The date on which an Employee's employment is terminated because he quits, retires, is discharged or dies; or

(b) The first anniversary of the first date of a period of absence from employment (with or without pay) with CIGNA Corporation or a Related Company for any reason other than that his employment has terminated because he has quit, retired, been discharged or died, but not earlier than the expiration of any approved leave of absence, whether paid or unpaid.

The date of termination of employment and absence from employment shall be as defined by the personnel policies of CIGNA Corporation or the Related Company, as appropriate. An Employee is considered to remain in employment with CIGNA Corporation or a Related Company while he is on a leave of absence which has been approved by CIGNA Corporation or the Related Company, as appropriate. A leave of absence shall also include periods of military service for which re-employment rights are prescribed by

law. The date that an Employee's leave of absence ends shall be determined in accordance with the personnel policies of CIGNA Corporation or the Related Company, as appropriate, which ending date shall be no earlier than the date that the leave of absence is scheduled to end unless the Employee communicates to CIGNA Corporation or the Related Company, as appropriate, that he has terminated employment as of an earlier date.

1.64 "Spouse" shall mean the lawful marriage partner of a Participant.

1.65 "Subsequent Eligibility Computation Period" shall mean the Plan Year beginning with the Plan Year following Employee's Reemployment Commencement Date and succeeding Plan Years.

1.66 "TEFRA" shall mean the Tax Equity and Fiscal Responsibility Act of 1982.

1.67 "Termination for Cause" shall mean the termination of employment of a Participant by CIGNA Corporation or a Related Company on account of the conviction of the Participant for a felony involving fraud or dishonesty directed against CIGNA Corporation or any Related Company. (Effective July 26, 1989.)

1.68 "Trust" shall mean the Trust described in Article XIII.

1.69 "Trustee" shall mean the Trustee or Trustees of the Trust established pursuant to this Plan.

1.70 "Ultimate Retirement Benefit" shall mean, for purposes of computing certain surviving

Spouse benefits under Article VII, the yearly amount of normal retirement benefits a Participant would have been eligible to receive under the provisions of section 4.2 assuming the Participant (a) had not died, (b) had continued to receive credit for Credited Service until his Normal Retirement Date, and (c) had continued to receive Eligible Earnings at the same rate that was actually in effect immediately prior to his cessation of active participation; provided that (d) in determining Final Average Eligible Earnings, the yearly average of any bonuses and commissions received by the Participant in the thirty-six (36) month period immediately prior to his cessation of active participation will be used, and (e) if the Participant was a suspended Participant (as described in section 2.3) immediately prior to his death, only his Credited Service at that date shall be used to determine his Ultimate Retirement Benefit.

1.71 "Vesting Computation Period" shall mean the Plan Year.

1.72 "Vesting Service" shall mean the periods described in section 3.8.

1.73 "Voluntary Deductible Employee Contributions" and "Deductible Contributions" shall mean certain employee contributions made to the Prior Aetna and CG Plans and to this Plan pursuant to Code Section 219 until March 31, 1987, as described in Article XII.

1.74 "Voluntary Non-Deductible Employee Contributions" shall mean certain employee contributions made to the Voluntary Investment Plan portion of the Prior Aetna and CG Plans and to

this Plan until March 31, 1983, as described in section 11.4.

1.75 "Year of Credited Service" shall mean, effective December 31, 1993, any Benefit Credit Computation Period in which the Employee shall have completed at least 1,000 Hours of Service as an Eligible Employee.

1.76 "Year of Eligible Service" shall mean, effective December 31, 1993, any Initial or Subsequent Eligibility Computation Period in which the Employee shall have completed at least 1,000 Hours of Service.

1.77 "Year of Vesting Service" shall mean, effective December 31, 1993, any Vesting Computation Period in which the Employee shall have completed at least 1,000 Hours of Service.

Article II - Participation in the Plan

2.1 Commencement of Participation.

Each Eligible Employee who was a Participant in the Plan on the day before the Restatement Date shall continue to participate in the Plan in accordance with the terms herein. Each other Employee shall become a Participant on the date following the Restatement Date that he first becomes an Eligible Employee and completes an Hour of Service.

2.2 Active Participation

Once an Employee becomes a Participant, active participation in the Plan continues until suspension, Retirement, death, or other termination of

employment with CIGNA Corporation or a Related Company.

2.3 Suspended Participation

A Participant who remains an Employee but who ceases to be an Eligible Employee shall cease to be an active Participant and shall become a suspended Participant in the Plan. The Participant's employment during the period of suspension shall be considered as Eligible Service but shall not be considered as Credited Service. From and after December 31, 1993, the Participant's Hours of Service during the period of suspension shall be counted in determining his Eligible Service and Vesting Service but shall not be counted in determining his Credited Service. The Participant's compensation during the period of suspension shall not be considered as Eligible Earnings. The suspension shall end when the suspended Participant again becomes an Eligible Employee, at which time the Participant shall resume active participation in the Plan, or when the suspended Participant's employment with CIGNA Corporation and Related Companies terminates, at which time the suspended Participant shall cease to be a Participant in the Plan.

2.4 Resumption of Participation Upon Re-Employment

A Participant who terminates employment with CIGNA Corporation or a Related Company by reason of Retirement, or who is vested under Article VIII, and who, after a One-Year Break in Service, subsequently is re-employed by CIGNA Corporation or a Related Company shall be required to complete one year of Eligible Service (as of December 31, 1993, one Year of Eligible

Service) following his re-employment before he is eligible again for participation, whether active or suspended, in the Plan. Once he has completed this year of Eligible Service (as of December 31, 1993, one Year of Eligible Service), the Employee shall be reinstated as an active or suspended Participant in the Plan, as appropriate, as of the date of his re-employment.

If the Employee dies before completing one year of Eligible Service (as of December 31, 1993, one Year of Eligible Service) following his re-employment, the Employee shall be reinstated as either an active or suspended Participant in the Plan, as appropriate, retroactive to the date of his re-employment.

Article III - Service

3.1 Service - General

(a) Until December 31, 1993, two kinds of service were used for determining a Participant's benefits under the Plan: Eligible Service and Credited Service. Both types of Service were measured under elapsed time rules. From and after December 31, 1993, there are three types of service under the Plan: Eligible Service, Credited Service and Vesting Service. All three types of Service are measured under Hours of Service rules.

(1) Until December 31, 1993, Eligible Service was used to determine when a Participant became eligible for benefits under the Plan, such as vested benefits, early retirement benefits or survivor benefits. The

term Eligible Service as used in this Plan before December 31, 1993, was generally synonymous with "eligible service" in the prior INA Plan and with "service" in the prior Aetna and CG Plans except that in the prior Aetna and CG Plans, the method of determining such "service" was based upon Hours of Service within specified computation periods.

From and after December 31, 1993, Eligible Service is used solely to determine when a Participant described in section 2.4 is eligible to be reinstated as a Participant in the Plan following his re-employment.

(2) Until December 31, 1993, Credited Service was that portion of Eligible Service which was used to determine the dollar amounts of a Participant's benefits from the Plan. The term "Credited Service" in this Plan was generally synonymous with the term "credited service" in the prior INA, Aetna and CG Plans.

From and after December 31, 1993, Credited Service continues to be used to determine the amount of a Participant's accrued benefit under the Plan, but it is no longer related to Eligible Service.

(3) From and after December 31, 1993, Vesting Service is used to determine when a Participant has earned a nonforfeitable right to his accrued benefit

under the Plan; when a Participant becomes eligible for early retirement benefits under the Plan and the amount of those benefits; and when a Participant's Spouse becomes eligible for survivor benefits under the Plan and the amount of those benefits.

(b) Until December 31, 1993, a Participant's Eligible Service and Credited Service were based upon his period of service, which generally coincided with his employment with CIGNA Corporation or a Related Company for purposes of Eligible Service or employment with a Participating Company for purposes of Credited Service. From and after December 31, 1993, a Participant's Eligible and Vesting Service are based upon his Hours of Service with CIGNA Corporation and any Related Company, and his Credited Service is based upon his Hours of Service only as an Eligible Employee with a Participating Company.

(c) In some instances relating to periods before January 1, 1983, a Participant's Eligible Service, his Credited Service, or both, are determined under special rules of the Prior Plans as they existed prior to January 1, 1983. In these instances, the provisions of the Prior Plans must be consulted, although a general reference may be made to these provisions in this Plan. Notwithstanding the foregoing, several provisions of the Prior Plans dealing with a participant's Eligible Service and Credited Service are modified in this Plan.

3.2 Eligible Service (Effective until December 31, 1993)

(a) Eligible Service shall be expressed in years, months, and days. Eligible Service shall be measured in cumulative increments of periods of Eligible Service utilizing the elapsed time method. A thirty (30) day period shall equal a month. Twelve (12) months of Eligible Service shall equal a year of Eligible Service irrespective of whether this period of Eligible Service is completed within a twelve (12) consecutive month period. All periods of an Employee's Eligible Service shall be aggregated, except as provided in paragraph 3.2(e).

Eligible Service for temporary or casual employees who are paid by the hour, however, shall be measured in this Plan in cumulative increments of periods of service and shall be recognized as one month of Eligible Service for each calendar month in which the Employee worked at least one Hour of Service (within the meaning of 29 CFR §2530.200b-2 (a)(1)) for CIGNA Corporation or a Related Company.

(b) An Employee's Eligible Service includes all periods beginning on his Employment Commencement Date or Reemployment Commencement Date, as applicable, and ending on his Severance from Service Date, except as provided in paragraph 3.2(e) below.

(c) An Employee's Eligible Service shall be computed without regard to whether he is

a Participant or Eligible Employee at the time such service is performed.

(d) The determination of an Employee's Eligible Service shall, however, be subject to the following special rules which shall apply notwithstanding the general provisions of paragraph 3.2(c). Eligible Service shall include the following periods of service:

(1) An Employee whose employment with CIGNA Corporation or a Related Company has terminated because he has quit, retired, or been discharged and who is re-employed by CIGNA Corporation or a Related Company within twelve (12) consecutive months shall retain credit for his Eligible Service completed prior to the date such employment was terminated and shall also receive credit for Eligible Service for the period from the date of such termination of employment until the date of his re-employment.

(2) A Participant who is absent from employment (with or without pay) with CIGNA Corporation or a Related Company for any reason other than that his employment has terminated because he has quit, retired, been discharged or died, who, prior to the anniversary of the first date of such absence, does in fact quit, retire or become discharged, and who subsequently is re-employed by CIGNA Corporation or a Related Company

prior to the anniversary of the first date of such absence, shall retain credit for his Eligible Service completed prior to the date such employment was terminated and shall also receive credit for Eligible Service for the period from the date of such termination of employment until the date of his re-employment.

(3) For an Employee who was an active Participant on December 31, 1982 in the Aetna Plan, the CG Plan, or the INA Plan, Eligible Service shall include those periods of service until and including December 31, 1982 recognized as "eligible service" or "service" in the Prior Plans to the extent that such "eligible service" or "service" is utilized for the same purposes as Eligible Service in this Plan.

(4) For employees who were active Participants on December 31, 1982 in the Aetna Plan or the CG Plan, Eligible Service shall include additional periods of regular employment which would have been "service" under the terms of those Prior Plans except for forfeitures due solely to the operation of break-in-service rules in those Prior Plans, but shall not include such additional periods of temporary or casual employment prior to January 1, 1976.

(5) For Employees who were active Participants in the Plan on January 1,

1983 or later, Eligible Service shall include prior periods of employment during which the employees were not participants in the Prior Plans because of the Prior Plan's maximum entry age limitation.

(6) For Employees who were active Participants in the Plan on January 1, 1983 or later, Eligible Service shall include prior periods of employment beyond the normal retirement date which were not recognized as "service" or as "eligible service" in the Prior Plans.

(7) For an Employee rehired on or after January 1, 1983, Eligible Service shall include all periods of "eligible service" previously recognized in the INA Plan.

(8) For an Employee re-hired on or after January 1, 1983, Eligible Service shall include all periods of "service" previously recognized in the Aetna Plan or CG Plan including that "service" referred to in subparagraph 3.2(d)(4).

(9) Eligible Service includes periods of service of an individual with an Acquired Entity after the acquisition date. If the Acquired Entity becomes a Participating Company at any time following its acquisition, Eligible Service for an individual who was an Employee on the date the Related Company became a Participating

Company shall also include the period of service with the Acquired Entity beginning with the last date that the Employee was hired. If the Acquired Entity does not become a Participating Company, the Employee's Eligible Service shall not include periods of employment with the Acquired Entity prior to its acquisition. However, the Board of Directors may specifically prescribe that pre-acquisition employment shall be included as Eligible Service in this Plan. For these purposes, the Plan Administrator shall define the term "employment" and shall approve the measurement of Eligible Service.

(10) Notwithstanding subparagraph 3.2(d)(9), for Employees of Cravens, Dargan Pacific Coast, Inc. who became participants of the Aetna Plan on January 1, 1974, employment or service before that date with Cravens, Dargan is not Eligible Service.

(11) For an Employee who was an active participant on December 31, 1990 in the CHP Plan, Eligible Service shall include those periods of service until and including December 31, 1990 recognized as "eligible service" or "service" in the CHP Plan to the extent that such "eligible service" or "service" is utilized for the same purposes as Eligible Service in this Plan.

(12) Effective as of the close of business on December 31, 1990, for any Employee who had participated in the EQUICOR Employees Retirement Income Plan, years of Eligible Service under this Plan shall include years of service credited under that EQUICOR plan, as of December 31, 1990, for purposes of determining eligibility or vesting rights.

(e) Effective January 1, 1989, in the case of a Participant who does not have a vested right to his accrued benefit and who incurs five (5) consecutive One-Year Breaks in Service, his prior periods of Eligible Service shall be disregarded if his latest Period of Severance equals or exceeds his prior periods of Eligible Service, whether or not consecutive (other than periods of Eligible Service excluded by a prior application of this rule), completed before such Period of Severance.

3.3 Credited Service (Effective until December 31, 1993)

(a) Credited Service shall be expressed in years and whole months, and shall be measured in cumulative incremental periods with twelve (12) total months of Credited Service equalling a year of Credited Service, irrespective of whether this period of Credited Service was completed within a twelve (12) consecutive month period. A thirty (30) day period of Credited Service shall equal a month of Credited Service.

(b) An Employee accumulates Credited Service generally for all periods of his Eligible Service with a Participating Company during which he is both a Participant and an Eligible Employee.

(c) A Participant who was an employee of an Acquired Entity shall also accumulate Credited Service for those periods of Eligible Service with the Acquired Entity before it became a Participating Company, but only if:

(1) The employment was with a Related Company which was a participating company in the INA Plan on January 23, 1968; or

(2) The Board of Directors specifically prescribes that such Eligible Service is to be considered Credited Service in this Plan.

(d) Notwithstanding the general applications of paragraphs 3.3(a), (b) and (c), the Participant's Credited Service shall not include the following periods of employment or Eligible Service:

(1) Periods of employment which are not Eligible Service under the terms of this Plan or Prior Plans as they existed from time to time before January 1, 1983. This exclusion shall not apply, however, to that Eligible Service restored under subparagraph 3.2(d)(4).

(2) Periods of Eligible Service during which the Participant was a sus-

pended Participant as described in section 2.3 of the Plan.

(3) Periods of Eligible Service with an Acquired Entity before it became a Participating Company in the Plan unless specifically approved by the Board of Directors or unless included pursuant to paragraph 3.3(c).

(4) Periods of Eligible Service in excess of thirty (30) years (for New Formula Participants, Eligible Service in excess of thirty-five (35) years).

(5) Periods of employment or "service" before January 1, 1956, which were excluded from "credited service" under the terms of the Aetna Plan while the Participant was eligible to participate in the plan by making employee contributions, but did not make such contributions.

(6) Periods of employment or "service" before June 1, 1974 which were excluded from "credited service" under the terms of the CG Plan while the Participant was eligible to participate in the plan by making employee contributions, but did not make such contributions.

(7) Periods of "service" or Eligible Service prior to the date when the Aetna and the CG Plans became non-contributory, and which would have been excluded from "credited service" in the Prior Plans because the Participant elects or elected a refund of

his employee contributions as provided under the terms of the Prior Plans.

(8) Periods of Eligible Service as a full-time Agent of Connecticut General Life Insurance Company except for the initial three (3) years of Eligible Service, and then only if the four (4) following conditions are met:

a. employment as a full-time Agent must begin on the Employee's initial employment date and before January 1, 1989;

b. such Agent must transfer to management trainee status or other salaried employment status within five (5) years of his initial employment date;

c. the Employee must, subsequent to such transfer, be credited with at least twenty (20) years of Eligible Service as a salaried Employee or retired as a salaried Employee; and

d. the Employee must retire on or after April 1, 1980.

(9) Periods of Eligible Service following a termination of employment which are credited pursuant to subparagraphs 3.2(d)(1) and 3.2(d)(2).

(10) Periods of Eligible Service prior to a Period of Severance which are disregarded under subsection 3.2(e).

(11) Any Credited Service which is disregarded under paragraph 6.8(c).

3.4 1983 Transition Period

For those Participants who were participants in the Aetna and CG Plans on December 31, 1982, the merger of their Prior Plans into this Plan involved a change in the method of crediting both Eligible Service and Credited Service or "service" and "credited service" as termed under such Prior Plans from hours of service within computation periods to the equivalent method of elapsed time. The 1983 Plan Year was a transition period for those Participants, and special rules (set forth in the prior Plan document) applied for determining Eligible Service for that year.

3.5 Military Service

If an Employee has a leave of absence for service on active duty in the Armed Forces of the United States, he shall upon his return from leave receive, in addition to the credit for Eligible Service, Credited Service and, from and after December 31, 1993, Vesting Service to which he is otherwise entitled under this Article III, such other credit as may be required by Federal laws relating to military service and veterans' reemployment rights.

3.6 Hours of Service Method (Effective December 31, 1993)

A Participant who was employed by CIGNA Corporation or a Related Company as of December 31, 1993, shall have his Eligible Service and Credited Service, as measured under the provisions of the Plan immediately prior to that date,

converted into Eligible Service, Vesting Service and Credited Service under the rules set out in paragraphs 3.7, 3.8 and 3.9.

3.7 Eligible Service (Effective December 31, 1993)

(a) A Participant described in section 2.4 shall, upon his reemployment with CIGNA Corporation or any Related Company, be credited with one Year of Eligible Service upon the completion of an Initial or Subsequent Eligibility Computation Period in which he has earned at least 1,000 Hours of Service with CIGNA Corporation or any Related Company.

(b) Any such re-employed Participant who, on December 31, 1993, has less than one year of Eligible Service following his reemployment, with Eligible Service determined under the Plan's provisions in effect before December 31, 1993, shall be credited with Eligible Service under the Hours of Service rules as follows:

(1) The Participant shall be credited with 190 Hours of Service for each month of elapsed time Eligible Service following his re-employment;

(2) If the number of Hours of Service credited to an Employee under subparagraph 3.7(b)(1) is greater than or equal to 1,000, the Employee shall be credited with one Year of Eligible Service as of December 31, 1993;

(3) If the number of Hours of Service credited to an Employee under subparagraph 3.7(b)(1) is less than

1,000, the Employee's accumulated Hours of Service shall be credited as of December 31, 1993, to the Employee's Initial Eligibility Computation Period which includes December 31, 1993.

3.8 Vesting Service (Effective December 31, 1993)

(a) A Participant shall be credited with one Year of Vesting Service for any Vesting Computation Period in which he has earned at least 1,000 Hours of Service with CIGNA Corporation or any Related Company, including service in an ineligible class.

(b) An Employee who was employed by CIGNA Corporation or a Related Company on December 31, 1993, shall have Vesting Service as of that date based on the amount of his Eligible Service on that date credited under the Plan's provisions in effect before December 31, 1993, as follows:

(1) The number of whole years of Eligible Service the Employee has accumulated under the elapsed time method shall be converted into an equal number of whole Years of Vesting Service.

(2) If after applying subparagraph 3.8(b)(1) there remains any fractional year of Eligible Service greater than zero, an additional whole Year of Vesting Service will be added to the amount computed in subparagraph 3.8(b)(1). Otherwise, no additional Year of Vesting Service will be added.

(3) The number of Years of Vesting Service resulting from the steps in subparagraphs 3.8(b)(1) and (2) will be credited to the Participant as of December 31, 1993.

3.9 Credited Service (Effective December 31, 1993)

(a) A Participant shall be credited with one Year of Credited Service for any Benefit Credit Computation Period in which he has earned at least 1,000 Hours of Service as an Eligible Employee with any Participating Company.

(b) An Employee who was employed by CIGNA Corporation or a Related Company on December 31, 1993, shall be credited with Years of Credited Service as of that date based on the amount of his accumulated elapsed time Credited Service on that date, as follows:

(1) The number of whole years of Credited Service the Employee has accumulated under the elapsed time method shall be converted into an equal number of whole Years of Credited Service.

(2) For each month of any remaining period of less than one whole year of Credited Service, the Employee shall receive credit for 190 Hours of Service.

(3) If the number of Hours of Service credited to an Employee under subparagraph 3.9(b)(2) is greater than or equal to 1,000, the Employee shall be

credited with an additional whole Year of Credited Service as of December 31, 1993. If the number of Hours of Service credited to an Employee under subparagraph 3.9(b)(2) is less than 1,000, the Employee shall receive credit for an additional fraction of a Year of Credited Service equal to (A) the number of months described in subparagraph 3.9(b)(2) divided by (B) twelve (12).

3.10 Special Service Counting Rules (Effective December 31, 1993)

(a) The determination of an Employee's Eligible and Vesting Service shall be subject to the following rules:

(1) If an Acquired Entity becomes a Participating Company at any time following the acquisition date, Eligible Service and Vesting Service for an individual who was an Employee on the date the Acquired Entity becomes a Participating Company shall also include the Employee's Prior Service. If the Acquired Entity does not become a Participating Company, the Employee's Eligible Service and Vesting Service shall not include the Employee's Prior Service, unless the Board of Directors specifically provides that such Prior Service be included as Eligible Service and Vesting Service under the Plan. For purposes of this subparagraph 3.10(a)(1), the Plan Administrator shall have

sole discretion to determine any Employee's Prior Service.

(2) In the case of an Employee who does not have any vested right to an accrued benefit and who incurs a One-Year Break in Service, his years of Vesting Service prior to such Break shall be disregarded if the number of his consecutive One-Year Breaks in Service equals or exceeds the greater of (A) his aggregate number of Years of Vesting Service prior to such Break (computed by disregarding any Years of Vesting Service which were disregarded under a prior application of this rule), or (B) five (5).

(b) The determination of an Employee's Years of Credited Service shall be subject to the following rules:

(1) An individual employed by an Acquired Entity on the acquisition date shall not receive credit for Prior Service unless the Board of Directors specifically provides that such Prior Service be included as Credited Service under the Plan. For purposes of this subparagraph 3.10(b)(1), the Plan Administrator shall have sole discretion to determine any Employee's Prior Service.

(2) Credited Service shall not include periods of employment which are not Vesting Service under the terms of this Plan.

(3) The maximum number of Years of Credited Service which are recognized under the Plan are thirty (30) for other than New Formula Participants and thirty-five (35) for New Formula Participants.

(4) Credited Service shall not include periods of Vesting Service as a full-time Agent of Connecticut General Life Insurance Company except for the initial three (3) years of Vesting Service, and then only if the four (4) following conditions are met:

a. employment as a full-time Agent must begin on the Employee's Employment Commencement Date;

b. such Agent must transfer to management trainee status or other salaried employment status within five (5) years from his Employment Commencement Date;

c. the Employee must, subsequent to such transfer, be credited with at least twenty (20) years of Vesting Service as a salaried Employee or retired as a salaried Employee; and

d. the Employee must retire on or after April 1, 1980.

(5) Credited Service shall not include any Years of Vesting Service prior to a series of One-Year Breaks in Ser-

vice which are disregarded under paragraph 3.10(a)(2).

(6) Credited Service shall not include any Credited Service which is disregarded under paragraph 6.8(c).

(c) An Employee is considered to remain employed by CIGNA Corporation or a Related Company while he is on a leave of absence which has been approved by CIGNA Corporation or the Related Company, as appropriate. A leave of absence shall also include periods of military service for which re-employment rights are prescribed by law. The date that an Employee's leave of absence ends shall be determined in accordance with the personnel policies of CIGNA Corporation or the Related Company, as appropriate, which ending date shall be no earlier than the date that the leave of absence is scheduled to end unless the Employee communicates to CIGNA Corporation or the Related Company, as appropriate, that he has terminated employment as of an earlier date.

(d) An Employee who was employed by Principal Health Care of Ohio, Inc. ("Principal") on November 29, 1994, and became employed by a Participating Company on November 30, 1994, as part of the acquisition of certain assets of Principal in Columbus, Ohio shall be credited under this Plan with Years of Eligible, Vesting and Credited Service for prior periods of employment with Principal; however, any accrued benefit to which such Employee may

become entitled under this Plan shall be reduced in accordance with paragraph 4.2(d).

Article IV - Retirement Benefits

4.1 General

(a) A Participant's retirement benefits under the Plan are set forth in this Article IV. The Participant's retirement benefits (not including Spouse benefit) are described in the form of a single life annuity, although the Participant may elect other forms of payment. Retirement benefits which are payable in a form other than a single life annuity at Normal Retirement Age shall be no less than Equivalent Actuarial Value to the Participant's retirement benefits at Normal Retirement Age.

(b) A Participant's retirement benefits shall be payable as of his Benefit Commencement Date, and payment thereof shall begin as soon as practicable after such Benefit Commencement Date as provided in this Article IV. All periodic benefit payments for the life of a Participant or other payee shall be in monthly installments and shall continue through the monthly payment for the month during which the Participant or other payee dies. Payment of benefits shall commence not later than the sixtieth (60th) day after the end of the Plan Year which is the later of the Plan Year in which the Participant (1) attains Normal Retirement Age, or (2) terminates

employment, unless paragraph 4.1(d) or 4.1(e) applies. The first monthly payment of a Participant's retirement benefits shall also include those monthly retirement benefits delayed for the period from the Benefit Commencement Date until the date that payment of benefits actually begins.

(c) To receive retirement benefits, the Participant must apply for such benefits by giving the Plan Administrator a request for payment of retirement benefits using forms and procedures approved by the Plan Administrator. The request must be submitted at least sixty (60) days prior to the date that the Participant intends to have his benefits begin.

(d) The Plan Administrator shall make reasonable efforts to locate each Participant, former Participant or Beneficiary who is entitled to benefits under the Plan and to obtain from such individual information, including his marital status, necessary to determine the amount of the monthly benefits payable to him. If the Plan Administrator is unable to locate an individual to whom benefits are payable under the Plan or is unable to obtain information necessary to determine the amount of his monthly benefits, the Plan Administrator may, notwithstanding any other provision of this Article IV, defer payment of such benefits until the individual is located or the necessary information is obtained. Payment of these retirement benefits shall then commence within sixty (60) days fol-

lowing the date that the individual is located or the necessary information is obtained.

(e) If the Plan Administrator is unable to locate a Participant (or his Beneficiary) within a reasonable period of time and prior to the date that applicable state law requires escheat, the Participant's (or Beneficiary's) benefits may be forfeited. If the Plan Administrator is able to subsequently locate the Participant (or his Beneficiary), the forfeited benefits will be reinstated and payment commenced according to applicable sections of this Article IV within sixty (60) days after the Participant (or his Beneficiary) is located.

4.2 Normal Retirement Benefits

(a) A Participant whose Retirement from CIGNA Corporation or a Related Company occurs under any of the following circumstances shall be entitled to receive normal retirement benefits from the Plan:

(1) Retirement after attaining Normal Retirement Age; or

(2) For a Participant who was a participant in the Aetna Plan or CG Plan on December 31, 1982, Retirement at the end of any month after he attains age sixty-five (65), whether or not he has completed five (5) years of Eligible Service or, from and after December 31, 1993, five (5) Years of Vesting Service.

If a Participant continues in the service of CIGNA Corporation or a Related Company after his Normal Retirement Date, he shall continue to participate in the Plan and shall continue to receive credit for purposes of benefit accrual for his Credited Service and for his Eligible Earnings, subject to the provisions of the Plan, until he actually retires.

(b) The annual normal retirement benefit for life, payable in equal monthly installments, shall be equal to a benefit determined under the formula in subparagraph 4.2(b)(1), except for the special offset described in subparagraph 4.2(b)(2), or by the alternative calculation method described in paragraph 4.2(c). Such annual normal retirement benefit for New Formula Participants shall be equal to a benefit determined under the formula in subparagraph 4.2(b)(3), or 4.2(b)(4) if applicable, except for the special offset described in paragraph 4.2(d). The normal retirement benefit shall be subject to special minimum and maximum benefits described in sections 4.5 and 4.6:

(1) The normal retirement benefit formula for other than New Formula Participants is:

Two percent (2%) of the Participant's Final Average Eligible Earnings multiplied by the Participant's Credited Service (not to exceed thirty (30) years);

minus

One-half (1/2) of the Participant's annual primary old age insurance benefit under the Social Security Act in effect at his Retirement Date; provided, however, that, for purposes of this formula, the Participant's annual primary old age insurance benefit shall be accrued ratably over a period of thirty-five (35) years.

(2) For an employee who was a Participant in the former PEG Pension Plan (the plan set forth in the Pension Trust Agreement of Pacific Employer's Insurance Company restated as of June 1, 1965, as amended September 1, 1965) and who has withdrawn his employee contributions to the PEG plan, the normal retirement benefit shall be further reduced by the annual lifetime benefit which is the actuarial equivalent of the amount of his withdrawn employee contributions.

(3) The normal retirement benefit formula for a New Formula Participant is:

One and two-thirds percent (1.67%) of the Participant's Final Average Eligible Earnings multiplied by the Participant's Credited Service (not to exceed thirty-five (35) years);

minus

One-half (1/2) of the Participant's annual primary old age insurance benefit under the Social Security Act

in effect at his Retirement Date, whether or not such benefit is payable at the Participant's attainment of age sixty-five (65); provided, however, that, for purposes of this formula, the Participant's annual primary old age insurance benefit shall be accrued ratably over a period of thirty-five (35) years.

(4) Notwithstanding subparagraph 4.2(b)(3), the normal retirement benefit formula for a New Formula Participant described in subparagraph 3.2(d)(11) who was an active participant in the CHP Plan on December 31, 1988 is:

One percent (1%) of the Participant's Final Average Eligible Earnings multiplied by the Participant's Credited Service under the CHP Plan before January 1, 1989, plus one and two-thirds percent (1.67%) of the Participant's Final Average Eligible Earnings multiplied by the Participant's Credited Service on and after January 1, 1989 (not to exceed a total of thirty-five (35) years before and after January 1, 1989);

minus

One-half (1/2) of the Participant's annual primary old age insurance benefit under the Social Security Act in effect at his Retirement Date, whether or not such benefit is payable at the Participant's attainment

of age sixty-five (65); provided, however, that, for purposes of this formula, the Participant's annual primary old age insurance benefit shall be accrued ratably over a period of thirty-five (35) years.

(c) For Participants whose Eligible Service with a Participating Company included employment with Horace Mann Educators Corporation or its subsidiaries ("Horace Mann") prior to its acquisition by CIGNA Corporation or a Related Company, and whose pre-acquisition Eligible Service with Horace Mann is not Credited Service under this Plan, the Participant's retirement benefits shall be determined as follows:

(1) A hypothetical benefit shall be determined for the Participant. For these purposes, Horace Mann shall be considered a Participating Company for the period of the Participant's employment with Horace Mann. His hypothetical benefit shall be determined accordingly (including determinations pertaining to his Final Average Eligible Earnings, Credited Service and the amount of the Social Security benefit).

(2) The hypothetical benefit shall then be pro-rated by use of a fraction, the numerator of which is the Participant's Credited Service under the Plan and the denominator of which is

the hypothetical Credited Service, not to exceed thirty (30) years.

(d) For Participants described in paragraph 3.10(d) whose Eligible, Vesting and Credited Service includes prior employment with Principal Health Care of Ohio, Inc. ("Principal"), the normal retirement benefit (determined under subparagraph 4.2(b)(3)) shall be reduced by any benefits to which such Employee may be entitled under any Principal qualified pension plan.

(e) The Benefit Commencement Date for payment of normal retirement benefits shall be the first day of the month following the Participant's Retirement as described in paragraph 4.2(a).

4.3 Early Retirement Benefits

From and after December 31, 1993, the terms "Eligible Service" and "years of Eligible Service" as used in this section 4.3 are replace by "Vesting Service" and "Years of Vesting Service," respectively.

(a) A Participant who is at least age fifty-five (55) and has completed at least ten (10) years (at least fifteen (15) years for New Formula Participants) of Eligible Service on his Retirement Date, and whose Retirement from CIGNA Corporation or a Related Company occurs before the month in which he attains Normal Retirement Age, shall be entitled to receive early retirement benefits under this section 4.3.

The annual early retirement benefit for life, payable in equal monthly installments, shall be equal to a benefit determined as of the Participant's Retirement Date by the formula in subparagraph 4.3(a)(1), subject to the Early Retirement Reduction Factor described in subparagraph 4.3(a)(2) and the Social Security offset described in subparagraph 4.3(a)(3). Such annual early retirement benefit for New Formula Participants shall be equal to a benefit determined by the formula in subparagraph 4.3(a)(4), or subparagraph 4.3(a)(7) if applicable, subject to the Early Retirement Reduction Factor described in subparagraph 4.3(a)(5) and the Social Security offset described in subparagraph 4.3(a)(6). The early retirement benefit provisions are subject to the special minimum and maximum benefit provisions described in sections 4.5 and 4.6.

(1) The base early retirement formula for other than New Formula Participants is:

Two percent (2%) of the Participant's Final Average Eligible Earnings multiplied by the Participant's Credited Service (not to exceed thirty (30) years), adjusted to the extent applicable in accordance with subparagraph 4.2(b)(2) and paragraph 4.2(c);

(2) The base amount determined under subparagraph 4.3(a)(1) shall be multiplied by the appropriate Early Retirement Reduction Factor from the

table below based upon the Participant's age, expressed in years and twelfths of years, on the Benefit Commencement Date, and interpolated for noninteger ages. The result shall be Participant's early retirement benefit payable until the first day of the month following his attaining age sixty-five (65).

Early Retirement Reduction Factors
(Applicable on the Benefit Commencement Date)

Age on Benefit Commencement Date	Participant had 10 yrs. but less than 15 yrs. of Eligible Service at Retirement	Participant had 15 yrs. or more of Eligible Service at Retirement	Participant was in Aetna Plan or CG Plan on 12/31/82, and was age 55 or older on that date, and age plus Eligible Service at Retirement totalled 99 or More
65	100.0%	100.0%	100.0%
64	97.6	100.0	100.0
63	95.2	100.0	100.0
62	92.8	100.0	100.0
61	90.4	97.0	98.0
60	88.0	94.0	96.0
59	85.6	91.0	92.0
58	83.2	88.0	90.0
57	80.8	85.0	85.0
56	78.4	82.0	82.0
55	76.0	79.0	79.0

(3) When the Participant attains age sixty-five (65), his early retirement benefit determined under subparagraphs 4.3(a)(1) and (2) shall be reduced by one-half (1/2) of the annual primary old age insurance benefit determined as of his Retirement Date based upon the provisions of the Social Security Act in effect on his Retirement Date; provided, however, that, for purposes of this formula, the

Participant's annual primary old age insurance benefit shall be accrued ratably over a period of thirty-five (35) years.

(4) The base early retirement formula for a New Formula Participant is:

One and two-thirds percent (1.67%) of the Participant's Final Average Eligible Earnings multiplied by the Participant's Credited Service (not to exceed thirty-five (35) years), adjusted (if applicable) in accordance with paragraph 4.2(d);

(5) The base amount determined under subparagraph 4.3(a)(4) shall be multiplied by the appropriate Early Retirement Reduction Factor from the table below based upon the Participant's age, expressed in years and twelfths of years, on the Benefit Commencement Date, and interpolated for noninteger ages. The result shall be the Participant's early retirement benefit payable until the first day of the month following his attaining the earliest age for which primary old age insurance benefits under the Social Security Act are payable.

New Formula Participant
Early Retirement Reduction Factors
(Applicable on the Benefit Commencement Date)

Age on Benefit Commencement Date	Early Retirement Adjustment Factor
65	100.0%
64	95.0
63	90.0
62	85.0
61	80.0
60	75.0
59	70.0
58	65.0
57	60.0
56	55.0
55	50.0

(6) When the Participant attains age sixty-two (62), or, if later, his Retirement Date, his benefit determined under subparagraphs 4.3(a)(4) (or subparagraph 4.3(a)(7) if applicable) and (5) shall be reduced by one-half (1/2) of the Participant's annual primary old age insurance benefit under the Social Security Act available to him at age sixty-two (62), or, if later, at his Retirement Date, regardless of the age at which he begins receiving such old age insurance benefits, and such available benefit shall be determined as of his Retirement Date based upon the provisions of the Social Security Act in effect on his Retirement Date; provided, however, that, for purposes of this formula, the Participant's annual primary old age insurance benefit shall be accrued ratably over a period of thirty-five (35) years.

(7) Notwithstanding subparagraph 4.3(a)(4), the base early retirement formula for a New Formula Participant described in subparagraph 3.2(d)(11) who was an active participant in the CHP Plan on December 31, 1988 is:

One percent (1%) of the Participant's Final Average Eligible Earnings multiplied by the Participant's Credited Service under the CHP Plan before January 1, 1989, plus one and two-thirds percent (1.67%) of the Participant's Final Average Eligible Earnings multiplied by the Participant's Credited Service on and after January 1, 1989 (not to exceed a total of thirty-five (35) years before and after January 1, 1989).

(b) The Benefit Commencement Date for payment of early retirement benefits shall be the first day of the month following the Participant's Retirement as described in paragraph 4.3(a).

(c) If a Participant terminates employment by reason of early retirement but elects not to begin to receive his early retirement benefits, the Benefit Commencement Date for the payment of his retirement benefits shall then be the first day of the month chosen by the Participant in accordance with paragraph 4.1(c) but not later than the first day of the month following the month during which he attains Normal Retirement Age.

4.4 Termination Benefits

From and after December 31, 1993, the terms "Eligible Service" and "years of Eligible Service" as used in this section 4.4 are replace by "Vesting Service" and "Years of Vesting Service," respectively.

(a) A Participant who is vested under Article VIII and who terminates employment with CIGNA Corporation or a Related Company for reasons other than death or Retirement shall be entitled to termination benefits payable on his Normal Retirement Date. A Participant may elect instead to receive his termination benefit on the first day of any month following his attainment of age fifty-five (55) if:

(1) He is other than a New Formula Participant and has completed at least ten (10) years of Eligible Service; or

(2) He is a New Formula Participant and has completed at least fifteen (15) Years of Eligible Service; or

(3) He was an active participant on December 31, 1982, in the Aetna Plan or the CG Plan.

(b) The annual termination benefit for life, payable in equal monthly installments beginning on the Normal Retirement Date shall be equal to a benefit determined under the formula for a normal retirement benefit described in section 4.2. In applying this formula the Participant's Final Average Eligible Earnings, Eligible Service and Credited Service shall be deter-

mined as of the date he terminated employment with CIGNA Corporation or a Related Company. The determination of the annual primary old age insurance benefit shall be based upon the provisions of the Social Security Act in effect on his termination date.

(c) If a vested Participant whose Eligible Service commenced before January 1, 1985, and who is age forty-five (45) or older when he terminates his employment with CIGNA Corporation or a Related Company, elects to receive his termination benefit before his Normal Retirement Date, the annual termination benefit for life payable in equal monthly installments shall be equal to a benefit determined under the formula for an early retirement benefit described in section 4.3. In applying this formula the Participant's Final Average Eligible Earnings, Eligible Service and Credited Service shall be determined as of the date he terminated employment with CIGNA Corporation or a Related Company. The determination of the annual primary old age insurance benefit shall be based upon the provisions of the Social Security Act in effect on his termination date.

(d) If a vested Participant (other than a New Formula Participant) whose Eligible Service commenced after December 31, 1984, and before January 1, 1989, or who is under age forty-five (45) when he terminates his employment with CIGNA Corporation or a Related Company, elects to receive his

termination benefit before his Normal Retirement Date, the annual benefit for life payable in equal monthly installments shall be equal to a benefit determined under the formula for an early retirement benefit described in subparagraph 4.3(a)(1) with the additional components described in subparagraphs 4.4(d)(1) and (2). In applying subparagraph 4.3(a)(1), the Participant's Final Average Eligible Earnings, Eligible Service and Credited Service shall be determined as of the date he terminated employment with CIGNA Corporation or a Related Company.

(1) The amount determined under subparagraph 4.3(a)(1) shall be multiplied by the appropriate Vested Termination Reduction Factor from the table below based upon the Participant's age, expressed in years and twelfths of years, on the Benefit Commencement Date, and interpolated for noninteger ages. The result shall be the Participant's termination benefit until he attains age sixty-five (65).

Vested Termination Reduction Factors

Age on Benefit Commencement Date	Reduction Factors
65	100.0%
64	91.8
63	84.6
62	78.1
61	72.3

69	67.0
59	62.3
58	58.1
57	54.2
56	50.7
55	47.5

(2) When the Participant attains age sixty-five (65), his termination benefit, determined under subparagraph 4.4(d)(1) shall be reduced by one-half (1/2) of the Participant's annual primary old age insurance benefit based upon the provisions of the Social Security Act in effect on his termination date; provided, however, that, for purposes of this formula, the Participant's annual primary old age insurance benefit shall be accrued ratably over a period of thirty-five (35) years.

(e) If a vested New Formula Participant elects to receive his termination benefit before his Normal Retirement Date, the annual benefit for life payable in equal monthly installments shall be equal to a benefit determined under the formula for an early retirement benefit described in subparagraphs 4.3(a)(4) (or subparagraph 4.3(a)(7) if applicable), (5) and (6). In applying subparagraph 4.3(a)(4) (or subparagraph 4.3(a)(7) if applicable), the Participant's Final Eligible Earnings, Eligible Service and Credited Service shall be determined as of the date he terminated employment

with CIGNA Corporation or a Related Company.

(f) The Benefit Commencement Date for payment of termination benefits shall be the former Participant's Normal Retirement Date, or, if the former Participant requests in writing in accordance with paragraph 4.1(c) that payment of his termination benefits begin on an earlier date, the date so elected by the Participant.

4.5 Minimum Retirement Benefits

(a) Notwithstanding the preceding provisions of this Article IV, the minimum normal retirement benefit under section 4.2 and the minimum termination benefit which begins on the Normal Retirement Date under paragraph 4.4(b) shall be an annual benefit equal to seventy-two dollars ($72.00) per year for each year of Credited Service, not to exceed fifteen (15) years of Credited Service.

(1) For a Participant whose normal retirement benefit is calculated in accordance with paragraph 4.2(c), the minimum normal retirement benefit shall be prorated by the same fraction described in subparagraph 4.2(c)(2).

(2) For a Participant who is eligible for early retirement under Section 4.3, the minimum early retirement benefit shall be the minimum normal retirement benefit described in paragraph 4.5(a) (and subparagraph 4.5(a)(1), if applicable) multiplied by

the applicable Early Retirement Reduction Factor from the tables in subparagraphs 4.3(a)(2) or (5).

(3) For a Participant who was vested and elects to receive his termination benefit before his Normal Retirement Date:

(A) the minimum termination benefit under paragraph 4.4(c) shall be the minimum normal retirement benefit described in paragraph 4.5(a) (and subparagraph 4.5(a)(1), if applicable) multiplied by the applicable Early Retirement Reduction Factor from the table in subparagraph 4.3(a)(2);

(B) the minimum retirement benefit under paragraph 4.4(d) shall be the minimum normal retirement benefit described in paragraph 4.5(a) (and subparagraph 4.5(a)(1), if applicable) multiplied by the appropriate Vested Termination Reduction Factor from the table in subparagraph 4.4(d)(1); and

(C) the minimum retirement benefit (for New Formula Participants) under paragraph 4.4(e) shall be the minimum normal retirement benefit described in paragraph 4.5(a) multiplied by the appropriate Early Retirement

Reduction Factor from the table in subparagraph 4.3(a)(5).

(4) For a Participant described in paragraph 3.10(d), the minimum benefit under this paragraph 4.5(a) shall be based only on years of Credited Service with a Participating Company on and after November 30, 1994, without regard to any prior periods of employment with Principal.

(b) In no event shall the normal retirement benefit under section 4.2 be less than the highest amount of the single life annuity retirement benefit a Participant would have received had his Retirement occurred at any time prior to his Normal Retirement Date. Any such determination shall be made in accordance with regulations issued under Code Section 411. As so provided, the Social Security offset applied under subparagraphs 4.3(a)(3) and (6) and 4.4(d)(2) in the determination of the early retirement benefit may be adjusted for increases in Social Security which occur after the date the Participant became eligible for early retirement but prior to his Normal Retirement Date.

(c) In no event will the Equivalent Actuarial Value of retirement benefits be less than the Participant's Required Contributions plus interest to this Plan or a Prior Plan which have not been previously refunded as stated in such Plan.

4.6 Sale of Assets or a Subsidiary

(a) In the event of a sale by CIGNA Corporation or a Related Company ("Seller") to an unaffiliated purchaser of either (1) all or substantially all of the assets used by a Participating Company in a trade or business or (2) all of the Seller's interest in a subsidiary, a severance from employment will occur on the date of such sale with respect to any Employee who continues in employment with the corporation or other person acquiring such assets or with such subsidiary, as the case may be. Such Employees shall be referred to herein as "Severed Employees."

(b) Paragraph 4.6(a) shall not apply to any Severed Employee if, in connection with the sale, the purchaser agrees (1) to be substituted for CIGNA Corporation as the sponsor of the Plan, or any part thereof in which the Severed Employee participates, or (2) to establish a defined benefit pension plan qualified under Code Section 401(a) to which Plan assets and liabilities related to the Severed Employee will be transferred, or (3) to transfer to an existing defined benefit pension plan maintained by the purchaser and qualified under Code Section 401(a) Plan assets and liabilities related to the Severed Employee.

(c) Paragraph 4.6(a) shall not apply to any sale in which the purchaser is a Related Company.

(d) Paragraph 4.6(a) shall not apply unless the Plan continues to be maintained by CIGNA Corporation following such sale.

4.7 Special Provision for Section 401(a)(17) Participants. Notwithstanding the foregoing provisions of this Article IV, on and after January 1, 1994, the accrued benefit of a Section 401(a)(17) Participant shall be the sum of (A) such Participant's Frozen accrued benefit, plus (B) the Participant's accrued benefit in an amount computed under the applicable provisions of this Article IV, based upon the Participant's Final Average Eligible Earnings, Social Security primary old age insurance benefit and Credited Service as of the date of determination, but disregarding Credited Service prior to January 1, 1994 (except for purposes of the thirty (30) year limit or, for New Formula Participants, the thirty-five (35) year limit, on Credited Service).

4.8 Transfer of a Participant to or from Ross-Loos Pension Plan.

(a) Transfers to Ross-Loos Pension Plan. Ross-Loos Health Plan of California, Inc. ("Ross-Loos"), which is a Participating Company in this Plan with respect to its non-union employees, also maintains the Ross-Loos Health Plan of California Union Employees Pension Plan (the "Ross-Loos Plan") for its union employees. The Ross-Loos Plan is a defined benefit plan which provides benefits comparable to the benefits provided under this Plan for New Formula Participants. Accordingly, if, as a result of a change in employment status, a Participant ceases to be an Eligible Employee under this Plan but he becomes a Participant in the Ross-Loos Plan, the Plan Administrator shall instruct the

Trustee to transfer to the trustee of the Ross-Loos Plan assets equal to the present value of the Participant's accrued benefit, provided (i) that the Ross-Loos Plan will accept such assets and accompanying liabilities and (ii) that the requirements of Section 411(d)(6) of the Code (relating to protection of accrued benefits) are satisfied. Following such transfer of assets and liabilities, no benefit shall be payable to or with respect to such individual from this Plan.

(b) Transfers from Ross-Loos Pension Plan. If a participant in the Ross-Loos Plan changes his employment status and becomes an Eligible Employee and a Participant in this Plan, and if assets are transferred from the Ross-Loos Plan to this Plan in an amount equal to the present value of the Participant's accrued benefit under the Ross-Loos Plan, the accrued benefit of such Participant under this Plan shall be determined (i) as if all of the Participant's Credited Service under the Ross-Loos Plan from and after January 1, 1990 were Credited Service under this Plan and (ii) applying the Ross-Loos Plan benefit accrual formula applicable with respect to such Credited Service; provided, however, that such Participant's accrued benefit under this Plan shall in no event be less than his accrued benefit (within the meaning of Section 411(d)(6) of the Code) under the Ross-Loos Plan immediately prior to the transfer.

Article V - Maximum Retirement Benefits

5.1 Combined Plans Maximum Benefit

The retirement benefits payable under the Plan to a Participant who was formerly employed by a Related Company and is entitled to a benefit from that Related Company's defined benefit pension plan will be reduced by the amount that Y exceeds X where:

(a) "X" is the retirement benefit to which such Employee would have been entitled under this Plan, if all employment with Related and Participating Companies had been under this Plan; and

(b) "Y" is the combined retirement benefits payable to such Employee under the terms of this Plan and of the Related and Participating Companies' Pension Plans, excluding:

(1) benefits paid or due from the Educators Marketing Services Corporation Employees Money Purchase Pension Plan, the Connecticut General Life Insurance Company Agents Retirement Plan or another defined contribution pension plan of a Participating Company; and

(2) with respect to any other pension plan of a Participating Company, benefits attributable to employee contributions (either Voluntary or Required).

5.2 Statutory Maximum Retirement Benefit Limitations

(Certain definitions applicable to this section 5.2 are in section 5.4.)

(a) Maximum Pension Benefit

Regardless of any other provision of this Plan, the Annual Benefit to which a Participant is entitled at any time under the Plan shall not, during a Limitation Year, exceed the lesser of:

(1) The Defined Benefit Dollar Limitation for such Limitation Year; or

(2) 100% of the Participant's average Limitation Compensation for the three (3) consecutive calendar years during which he both participated in the Plan and received his greatest aggregate Limitation Compensation from CIGNA Corporation and all Related Companies.

(b) Adjustment for Early Retirement

If the retirement benefit of a Participant commences before the Participant's Social Security Retirement Age, the Defined Benefit Dollar Limitation shall be adjusted so that it is of Equivalent Actuarial Value to an annual benefit of $90,000 multiplied by the Adjustment Factor, beginning at the Social Security Retirement Age, based on the greater of the interest rate assumption under the Plan or an assumption of five percent (5%) per year. The adjustment provided for in the preceding sentence shall be made in such manner as the Secretary of the Treasury may prescribe which is consistent with the reduction for old-age insurance benefits commencing before the Social Security Retirement Age under the Federal Social Security Act.

(c) Adjustment for Deferred Retirement

If the retirement commences after the Participant's Social Security Retirement Age, the Defined Benefit Dollar Limitation shall be adjusted so that it is of Equivalent Actuarial Value to an annual benefit of $90,000 multiplied by the Adjustment Factor, beginning at the Social Security Retirement Age, based on the lesser of the interest rate assumption under the Plan or an assumption of five percent (5%) per year.

(d) Adjustment of Limitation for Years of Service or Participation

(1) Defined Benefit Dollar Limitation

If a Participant has completed fewer than ten (10) years of participation, the Participant's Annual Benefit shall not exceed the Defined Benefit Dollar Limitation as adjusted by a fraction, the numerator of which is the Participant's number of years (or part thereof) of participation in the Plan, and the denominator of which is ten (10). To the extent provided by the Secretary of the Treasury, this sub-paragraph shall be applied separately with respect to each change in the benefit structure of the Plan.

(2) Other Defined Benefit Limitations

If a Participant has completed fewer than ten (10) years of service with CIGNA Corporation and Related

Companies, the limitations described in Code Section 415(b)(1)(B) and Section 415(b)(4) shall be adjusted by multiplying such amounts by a fraction, the numerator of which is the Participant's number of years of service (or part thereof), and the denominator of which is ten (10).

(3) Limitations on Reductions

In no event shall subparagraphs 5.2(d)(1) and (2) reduce the limitations provided under Code Section 415(b)(1) and (4) to an amount less than one-tenth (1/10) of the applicable limitation (as determined without regard to this paragraph 5.2(d)).

(e) Total Annual Benefits Not in Excess of $10,000.

Notwithstanding the foregoing provisions of this section 5.2, the benefits payable with respect to a Participant under this Plan shall be deemed not to exceed the limitations of section 5.2 if:

(1) the benefits payable with respect to such Participant under this Plan and all other defined benefit plans maintained by CIGNA Corporation and Related Companies do not exceed $10,000 for the Plan Year, or for any prior Plan year; and

(2) CIGNA Corporation and Related Companies have not at any time maintained a defined contribution plan in which the Participant participated.

(f) Transition Rules.

(1) Preservation of Current Accrued Benefit as of 12/31/86. If the Current accrued benefit of an individual who is a Participant as of the first day of the Limitation Year beginning on January 1, 1987, exceeds the benefit limitations under Code Section 415(b) (as modified by paragraphs 5.2(b) and (c)), then, for purposes of Code Section 415(b) and (e), the Defined Benefit Dollar Limitation with respect to such individual shall be equal to such Current accrued benefit. This provision shall apply provided that the Plan met the applicable requirements of Code Section 415 as in effect for all Limitation Years.

(2) TEFRA Transition Rule. In the case of a Participant who participated in the Plan prior to January 1, 1983, the transition rule set forth in Section 235(g)(4) of TEFRA shall apply for purposes of this section 5.2.

5.3 Participation in One or More Defined Contribution Plans

In any case in which an individual has at any time participated in this Plan and has also participated in any defined contribution plan qualified under Code Section 401(a) maintained by CIGNA Corporation or a Related Company, the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction with respect to that Participant for any Limitation year shall not exceed 1.0. If the sum of the Defined Benefit

Plan Fraction and the Defined Contribution Plan Fraction with respect to any Participant for any Limitation year would otherwise exceed 1.0, the Annual Benefit payable under this Plan shall be reduced to the extent necessary to comply with such 1.0 limit.

5.4 Definitions Applicable to Sections 5.2 and 5.3

The following definitions shall apply for purposes of sections 5.2 and 5.3:

(a) "Annual Benefit" shall mean the benefit payable annually under this Plan in the form of a straight life annuity, within the meaning of Code Section 415(b)(2). Except as provided herein, a Participant's retirement benefit under the Plan shall, for purposes of applying the limitations of sections 5.2 and 5.3, be adjusted to a straight life annuity beginning at the same age which is of Equivalent Actuarial Value to such benefits in accordance with rules determined by the Commissioner of Internal Revenue. For purposes of making the foregoing adjustment to a straight life annuity, there shall not be taken into account the value of a qualified joint and survivor annuity provided under the Plan to the extent that such value exceeds the sum of:

(1) the value of a straight life annuity beginning on the same date; and

(2) the value of any post-retirement death benefits which would be payable even if the annuity were not in the form of a joint and survivor annuity.

(b) "Current Accrued Benefit" shall mean a Participant's accrued benefit under the Plan, determined as if the Participant had separated from service as of the close of the last Limitation Year beginning before January 1, 1987, when expressed as an Annual Benefit within the meaning of Code §415(b)(2). In determining the amount of a Participant's Current accrued benefit, the following shall be disregarded:

(1) any change in the terms and conditions of the Plan (including Prior Plans) after May 5, 1986; and

(2) any cost of living adjustment occurring after May 5, 1986.

(c) "Defined Benefit Dollar Limitation" shall mean the limitation set forth in Code Section 415(b)(1)(A) multiplied by the Adjustment Factor as provided by the Secretary of the Treasury.

(d) "Defined Benefit Plan Fraction" shall mean, for any Limitation Year, a fraction, the numerator of which is the sum of the Participant's projected Annual Benefit under the Plan (determined as of the end of the Limitation Year), and the denominator of which is the lesser of:

(1) The product of 1.25, multiplied by the Defined Benefit Dollar Limitation in effect for such Limitation Year; or

(2) The product of 1.40, multiplied by the amount which may be taken into account under subparagraph 5.2(a)(2) with respect to such Participant for such Limitation Year.

For purposes of this paragraph 5.4(d), a Participant's projected Annual Benefit shall be calculated under the Plan on the assumption that he remains in service of a Participating Company until his Normal Retirement Age (or his current age, if that is later), that his compensation continues at the same rate as in the Limitation Year the projection is being made, and that all other factors used to determine benefits under the Plan remain the same as in the Limitation year the projection is being made. If the Participant's projected number of years of service at his Normal Retirement Age is less than ten (10), the denominator of the Defined Benefit Plan Fraction shall be adjusted by multiplying such denominator by a fraction, the numerator of which is such projected number of years and the denominator of which is ten (10).

TEFRA Transition Rule. In the case of a Participant who participated in this Plan (including any Prior Plan) prior to January 1, 1983, the transition rule set forth in Section 235(g)(4) of TEFRA shall be applied in determining the Defined Benefit Plan Fraction.

(e) "Defined Contribution Dollar Limitation" shall mean $30,000 or, if greater, one-fourth (1/4) of the Defined Benefit Dollar Limitation in effect for the Limitation Year.

(f) "Defined Contribution Plan Fraction" shall mean, for the Limitation Year, a fraction,

the numerator of which is the sum of the Annual Additions to the Participant's account under any defined contribution plan maintained by CIGNA Corporation or a Related Company for such Limitation Year and all prior Limitation Years (including the Annual Additions attributable to the Participant's non-deductible employee contributions to this and all other defined benefit plans maintained by CIGNA Corporation or a Related Company), and the denominator of which is the sum of the lesser of the following amounts, determined for such Limitation Year and for each prior year of employment with CIGNA Corporation or a Participating Company:

(1) The product of 1.25, multiplied by the Defined Contribution Dollar Limitation in effect for such Limitation Year; or

(2) Thirty-five percent (35%) of the Participant's Limitation Compensation for such Year.

For purposes of computing the Defined Contribution Plan Fraction, "Annual Additions" shall mean the amount allocated to a Participant's account during the Limitation Year as a result of:

(1) Employer contributions (other than excess deferrals distributed in accordance with Treasury Regulations Section 1.402(g)-1(e)(2) or (3));

(2) Employee contributions;

(3) Forfeitures; and

(4) Amounts described in Code Sections 415(1)(1) and 419A(d)(2).

The Annual Addition for any Limitation Year beginning before January 1, 1987 shall not be recomputed to treat all employee contributions as an Annual Addition.

Adjustment of Defined Contribution Plan Fraction. If the Plan satisfied the applicable requirements of Code Section 415 as in effect for all Limitation Years beginning before January 1, 1987, an amount shall be subtracted from the numerator of the Defined Contribution Plan Fraction (not exceeding such numerator) as prescribed by the Secretary of the Treasury so that the sum of the Defined Benefit Plan Fraction and Defined Contribution Plan Fraction computed under Code Section 415(e)(1) does not exceed 1.0 for such Limitation Year.

TEFRA Transition Rule. If the sum of the Defined Benefit and Defined Contribution Plan Fractions of a Participant for the 1982 Limitation Year would otherwise exceed 1.0, the Participant's Defined Contribution Plan Fraction shall be adjusted by permanently subtracting from the numerator an amount determined in accordance with regulations prescribed under Section 235(g)(3) of TEFRA, so that such sum does not exceed 1.0 for such Limitation Year; provided, however, that this adjustment may be made only if the plans

satisfied the requirements of Code Section 415 for such Limitation Year.

(g) "Limitation Compensation" shall mean wages within the meaning of Code Section 3401(a) and all other payments of compensation to an Employee by a Participating Company or Related Company (in the course of the trade or business of the Participating Company or Related Company) for which the Participating Company or Related Company is required to furnish the Employee a written statement under Code Section 6041(d), Section 6051(a)(3), and Section 6052 determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed.

(h) "Limitation Year" shall mean the calendar year.

(i) "Social Security Retirement Age" shall mean the age used as the retirement age under Section 216(l) of the Social Security Act, except such Section shall be applied (1) without regard to the age increase factor, and (2) as if the early retirement age under Section 216(l)(2) of such Act were sixty-two (62).

5.5 Aggregation Rules

For purposes of applying the limitations of sections 5.2 and 5.3 applicable to a Participant for a particular Limitation Year:

(a) All tax-qualified defined benefit plans maintained by CIGNA Corporation shall be treated as one defined benefit plan; and all tax-qualified defined contribution plans maintained by CIGNA Corporation shall be treated as one defined contribution plan; and

(b) Any tax-qualified defined benefit plan or tax-qualified defined contribution plan maintained by any Related Company shall be deemed to be maintained by CIGNA Corporation.

5.6 Discrepancy With Code

The limitations set forth in Article V are intended to comply with the provisions of Code Section 415 and any regulations issued pursuant thereto, so that the maximum retirement benefit shall be exactly equal to the maximum amount permitted pursuant thereto. Should there be any discrepancy between the provisions of Article V and those of Code Section 415 and any regulations issued pursuant thereto, such discrepancy shall be resolved by giving full effect to the provisions of said Section 415 and any regulations issued pursuant thereto, while in effect.

Article VI - Forms of Benefits; Distribution Requirements

6.1 Normal Form -- Single Life Annuity

The retirement benefits described in Article IV are expressed in the form of a single life annuity for the life of the Participant. Under a single life annuity, benefits are paid in equal monthly installments. The first installment is payable on the Participant's Benefit Commencement Date,

and the last installment is payable on the first day of the month in which the Participant dies.

6.2 Qualified Annuity

(a) General Rule. Unless the election provided in paragraph 6.2(b) has been made, the benefits described in Article IV shall be paid in the form of a Qualified Annuity with respect to any Participant who begins to receive benefit payments under the Plan.

(1) A Qualified Annuity for an unmarried Participant means an annuity for the life of the Participant.

(2) A Qualified Annuity for a married Participant means an annuity for the life of the Participant, with a survivor annuity for the life of his Spouse. The survivor annuity shall be 50% of the amount of the annuity payable during the joint lives of the Participant and his Spouse. Alternatively, the Participant may elect during the election period described in paragraph 6.2(b) that the survivor annuity shall be 66-2/3%, 75%, or 100% of the amount of the annuity payable during the joint lives of the Participant and his Spouse. The joint and survivor annuity shall in any case be of Equivalent Actuarial Value to the benefit to which the Participant is entitled under the Plan in the normal form of benefit described in section 6.1, except as provided in section

6.4(b). If, pursuant to a Qualified Domestic Relations Order, more than one individual is a designated spouse, the amount of the survivor pension payable under this section 6.2 shall not exceed the amount that would be paid if there were only one surviving Spouse.

(b) Election Not to Receive Qualified Annuity

A Participant may elect, during the 90-day period ending on his Benefit Commencement Date, and subject to the restrictions on such election provided in paragraph 6.2(c), not to receive his benefit in the form of a Qualified Annuity, and instead to receive his benefit in one of the optional forms described in section 6.3. The Plan Administrator shall provide to each Participant, no more than ninety (90) days and no less than thirty (30) days prior to his Benefit Commencement Date, a written explanation of:

(1) The terms and conditions of a Qualified Annuity, including a general description of the eligibility conditions and other material features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit available under the Plan;

(2) The Participant's right to make, and the effect of, an election to waive a Qualified Annuity;

(3) The rights of a Participant's Spouse (if the Participant is married); and

(4) The Participant's right to make, and the effect of, a revocation of a previous election to waive a Qualified Annuity.

(c) Requirement of Spousal Consent

Any election under this section 6.2 which results in a married Participant's waiver of the Qualified Annuity must be in writing and must be consented to by the Participant's Spouse. The Spouse's consent to a waiver must be witnessed by a notary public, must be irrevocable, must be limited to a benefit for a specific alternate beneficiary (or a single life annuity for the life of the Participant), and must specify the particular optional form of benefit elected by the Participant. Notwithstanding the spousal consent requirement, if the Participant establishes to the satisfaction of the Plan Administrator or other Plan representative that such written consent may not be obtained because there is no Spouse or because the Participant's Spouse cannot be located, the waiver shall be deemed a permissible election. If the Spouse is legally incompetent to give consent, the Spouse's legal guardian may give consent, even if such guardian is the Participant. Also, if the Participant is legally separated or has been abandoned (within the meaning of local law) and the Participant has a court order to such affect, spousal consent is not required unless a Qualified Domestic Relations Order provides otherwise. Any consent necessary under this provision shall be valid only with respect to the spouse who signs the consent, or, in the event of a deemed permissible election, the designated spouse (if any). Additionally, a Participant may revoke a prior waiver without the consent of his

Spouse at any time before his Benefit Commencement Date. The number of revocations shall not be limited. Any new waiver or change of the terms of a specific consent will require a new spousal consent.

6.3 Optional Forms of Retirement Benefits

(a) Subject to requirements of paragraphs 6.2(b) and (c), a Participant who has a Spouse on his Benefit Commencement Date may elect to receive his retirement benefits in the form of a single life annuity described in subparagraph 6.2(a)(1) in lieu of the Qualified Annuity form provided in subparagraph 6.2(a)(2).

(b) Subject to the requirements of section 6.2, a Participant may elect to receive his benefits in the form of a reduced annuity for the life of the Participant, with a contingent survivor annuity for the life of a person designated by the Participant as contingent survivor. The contingent survivor annuity form of payment described in this paragraph 6.3(b) shall be of Equivalent Actuarial Value to the benefit payable in the normal form as described in Section 6.1. Subject to section 6.6, the survivor annuity for the life of the contingent survivor provided under the optional form of contingent survivor annuity shall be fifty percent (50%), sixty-six and two-thirds percent (66-2/3%), seventy-five percent (75%), or one hundred percent (100%) of the benefit payable during the Participant's lifetime, as the Participant shall elect.

(c) Each Participant who elects the optional form of distribution of retirement benefits described in paragraph 6.3(b) shall at the time of such election designate on forms provided by the Plan Administrator a contingent survivor to receive the survivor benefits provided. Subject to the requirements of section 6.2, the Participant may, at any time prior to his Benefit Commencement Date, revoke such designation or substitute another such contingent survivor. A Participant's designation of contingent survivor shall automatically become void if such contingent survivor dies before the Participant's Benefit Commencement Date. A Participant's designation of his contingent survivor shall become irrevocable on his Benefit Commencement Date.

(d) A Participant's election or revocation of an election under this section 6.3 shall become effective on his Benefit Commencement Date. Subject to the requirements of section 6.2, the Participant may at any time during the election period described in paragraph 6.2(b) elect in writing not to receive his benefit in the Qualified Annuity form, elect one of the optional forms of benefits described in this section 6.3, and make any of the other elections provided in this Article VI. The Participant may also at any time during such election period revoke in writing a previous election. The notice of such an election or revocation must be filed in writing with the Plan Administrator and the Plan Administrator

shall provide a form for such elections or revocations.

(e) Subject to the requirements of section 6.2, and in addition to the optional forms of distribution otherwise provided in this section 6.3, a Participant who, on August 1, 1981, was an employee of the Ross-Loos Medical Group, Inc. and eligible to participate in the Ross-Loos Medical Group, Inc. Defined Benefit Pension Plan (a predecessor of the CHP Plan), may elect to receive his benefits in either of the following optional forms:

(1) In the form of a reduced annuity for the life of the Participant, with 120 monthly payments certain, so that if the Participant dies before 120 monthly payments have been made, the remaining guaranteed monthly payments will be paid to the beneficiary designated by the Participant.

(2) In the form of an installment annuity guaranteed to be payable for 120 months.

6.4 Preserved Spouse's Benefit

(a) If a Participant's Spouse would have been eligible for a surviving Spouse benefit under sections 7.2, 7.3, 7.4 or 7.5 had the Participant died on the day before his Benefit Commencement Date, then:

(1) A Spouse who would have been eligible for benefits under sections 7.2, 7.4 or 7.5 will remain eligible for such

surviving Spouse benefit if the Participant predeceases her; and

(2) A Spouse who would have been eligible for benefits under section 7.3 will be eligible for a surviving Spouse benefit if the Participant predeceases her, and such benefit shall be equal to thirty percent (30%) of Participant's Adjusted Retirement Benefit.

(b) In computing a qualified joint and survivor annuity of Equivalent Actuarial Value under subparagraph 6.2(a)(2) as of Participant's Benefit Commencement Date, both the level of benefit payable in the qualified joint and survivor annuity form for the joint lives of Participant and his Spouse and the level of the survivor annuity available to the Spouse shall reflect the availability of any surviving Spouse benefit under paragraph 6.4(a).

(c) If the Participant makes an election under section 6.3 to waive the Qualified Annuity form of benefit, that election shall have no effect on the availability of the surviving Spouse benefit under paragraph 6.4(a).

(d) A Participant who has a Spouse described in paragraph 6.4(a) may also name that Spouse as contingent survivor under paragraph 6.3(b), provided that the percentage of continuation elected by the Participant cannot result in the retirement benefit payable to the contingent survivor under the option plus the surviving Spouse benefit exceeding the reduced amount of retirement benefit payable to the Participant

or, if the Participant's Benefit Commencement Date is prior to his Normal Retirement Date, the Adjusted Retirement Benefit, as reduced for this option, applicable to the Participant.

(e) Upon the death of the Participant's Spouse, or upon the death of the Participant if the Spouse does not survive the Participant, there will be paid to the Participant's Beneficiary an amount equal to the excess, if any, of (1) the Participant's Required Contributions under the Aetna Plan or CG Plan, together with Credited Interest computed thereon to the Participant's Benefit Commencement Date, over (2) the sum of all of the retirement benefit payments under the Plan made to the Participant and his Spouse.

6.5 Suspension of Payments to Re-employed Retirees

(a) General Rule

Except as otherwise required by section 6.6, no benefit payments shall be made under Article IV for any period in which a Participant is "Substantially Re-employed." A Participant is Substantially Re-Employed if the Participant has remained in or returned to employment with CIGNA Corporation or a Related Company during any calendar month subsequent to the time the Participant's pension payments commenced (or would have commenced had the Participant not remained in or returned to such employment after his Normal Retirement Date) and, in such calendar month, the Participant receives

payment from CIGNA Corporation or a Related Company for work performed on more than ten (10) days, or effective December 31, 1993, for at least eighty (80) hours of service (as defined in 29 CFR Section 2530.200b-2(a)(1)).

(b) Notification of Suspension

If a Participant's benefit payments are suspended for any period after his Normal Retirement Date, the Plan Administrator shall notify the Participant, by personal delivery or first class mail, during the first calendar month commencing on or after his Normal Retirement Date in which the Plan withholds payments, that his benefits are suspended, in accordance with the requirements set forth in 29 CFR Section 2530.203-3(b)(4).

(c) Resumption of Payments

A Participant's benefit payments shall resume, subject to offset as provided by 29 CFR Section 2530.203-3(b)(2) and (3), no later than the first day of the third calendar month after the calendar month in which the Participant ceases to be Substantially Re-employed. The benefits payable when the Participant ceases to be Substantially Re-employed shall be the benefit determined in accordance with Article IV, based on his total years of Credited Service up to his subsequent termination of employment, but reduced by an amount which reflects the Equivalent Actuarial Value of the payments previously received; provided, however, that the

amount of the recalculated benefit payable when the Participant ceases to be Substantially Re-employed shall in no event be less than the amount of the benefit the Participant was previously receiving.

(d) Determination re Suspension

Every Participant must notify the Plan Administrator of any employment with CIGNA Corporation or a Related Company subsequent to the time his benefit payments from the Plan commence. A Participant may request that the Plan Administrator render a determination pursuant to section 15.5 as to whether specific contemplated employment would cause the Participant to become Substantially Re-employed.

6.6 Requirements Concerning Distributions

Notwithstanding any other provision of this Plan, all benefit distributions under this Article VI shall be subject to the following requirements:

(a) Before Death

(1) Last Date for Commencement of Benefit Payments. The payment of benefits to a Participant under this Plan shall commence not later than the 60th day after the close of the Plan Year in which the later of the following events occurs:

(A) the Participant attains his Normal Retirement Age; or

(B) the Participant separates from the service of CIGNA Corporation and all Related Companies.

(2) Additional Rule for Commencement of Benefit Payments. Effective January 1, 1989, the distribution of benefits to each Participant who is entitled to a benefit under the Plan shall commence not later than April 1 of the calendar year following the calendar year in which he attains age 70-1/2. This rule shall not apply to a Participant who attained age 70-1/2 before January 1, 1988, unless the Participant is a 5% owner within the meaning of proposed Treas. Reg. §1.401(a)(9)-1 Q&A B-2(d)(1). In addition, for purposes of this rule, a Participant who attained age 70-1/2 in 1988, who is not a 5% owner, and who had not retired by January 1, 1989, shall be treated as having attained age 70-1/2 on January 1, 1989.

Any additional benefits which accrue after a Participant begins receiving distributions in accordance with this subparagraph 6.6(a)(2) shall be distributed as a separate identifiable component beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such benefits accrue. Such additional benefit accruals for a calendar year shall be reduced (but not below zero), in accordance with Code Section 411(b)(1)(H)(iii)(I) and Treasury regulations thereunder, by the Equivalent Actuarial Value of any benefits dis-

tributed to the Participant pursuant to this subparagraph 6.6(a)(2).

(3) Duration of Benefit Payments. The distribution of benefit payments to each Participant shall be made:

(A) In accordance with regulations prescribed by the Secretary of the Treasury, over the life of the Participant, or over the lives of the Participant and his designated Beneficiary; or

(B) In accordance with such regulations, over a period not extending beyond the life expectancy of the Participant or the life expectancy of the Participant and his designated Beneficiary, provided that life expectancies shall not be redetermined.

(b) After Death

(1) Distributions Already Begun. If a Participant dies after distribution of his benefit has commenced in accordance with a method of distribution under subparagraph 6.6(a)(3), the remaining portion of such benefit shall be distributed at least as rapidly as such benefit would have been distributed under such method as of the date of the Participant's death.

(2) Rules for Other Cases. If a Participant dies before distribution of his benefit has commenced, and if any portion of the Participant's interest is payable to (or for the benefit of) his

designated Beneficiary, distribution may be made, in accordance with regulations prescribed by the Secretary of the Treasury, over the life of such designated beneficiary or over a period not extending beyond the life expectancy of such designated Beneficiary; provided that such distribution shall commence not later than the later of:

(A) The end of the calendar year following the calendar year in which the Participant dies; or

(B) If the Participant's designated Beneficiary is his surviving Spouse, the end of the calendar year in which the Participant would have attained age 70- 1/2; provided that if the Spouse dies before benefit payments begin, this subparagraph 6.6(b)(2) shall be applied as if the Spouse were the Participant. For purposes of this provision, any amount paid to the Participant's child shall be treated as if paid to the surviving Spouse, if such amount becomes payable to the surviving Spouse when the child reaches majority (or other designated event permitted under Treasury regulations).

In any other case, the entire benefit of the Participant shall be distributed

by the end of the fifth calendar year following the date of his death.

(c) Other Requirements

All benefit distributions under the Plan shall be made in accordance with the regulations under Code Section 401(a)(9), including the minimum distribution incidental benefit requirements of Code Section 401(a)(9)(G) and proposed Treas. Reg. Section 1.401(a)(9)-2, or any successor regulations.

(d) Transitional Rule

Notwithstanding the above requirements in this section 6.6, distribution on behalf of any Participant, including a Key Employee if the Plan is Top-Heavy, may be made in accordance with the following requirements (regardless of when such distribution commences):

(1) The distribution must be one provided for in the Plan.

(2) The distribution by the Plan is one which would not have disqualified the Plan under Code Section 401(a)(9) as in effect prior to amendment by the Tax Reform Act. of 1984.

(3) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.

(4) Such designation was in writing, was signed by the Participant or the

Beneficiary, and was made before January 1, 1984.

(5) The Participant had accrued a benefit under the Plan as of December 31, 1983.

(6) The method of distribution designated by the Participant of the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the Beneficiaries of the Participant listed in order of priority.

A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subparagraph 6.6(d)(6) above.

If a distribution election is revoked, any subsequent distribution must satisfy the requirements of Code Section 401(a)(9) as amended by the Tax Reform Act of 1984.

Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

6.7 Special Rule for Former Participants of the PEG Plan

The retirement benefits and rights of an Employee who after January 1, 1965 was a Participant in the plan set forth in the Pension Trust Agreement of Pacific Employer's Insurance Company, restated as of June 1, 1965, as amended September 1, 1965, shall not be diminished or adversely altered by the provisions of this Plan.

6.8 Small Benefits (Effective September 1, 1992)

(a) If a Participant terminates employment with CIGNA Corporation and all Related Companies before qualifying for normal or early retirement benefits for any reason other than death, and if, as of the date of distribution, the present Equivalent Actuarial Value of his entire vested accrued benefit does not exceed $3,500, the Plan Administrator shall cause such entire vested accrued benefit to be distributed to the Participant or in a single lump sum form. Such distribution shall be made as soon as practicable following the Partici-

pant's termination of employment, but not later than the last day of the Plan Year following the Plan Year in which such termination occurs. A Participant who has no vested interest in his accrued benefit at the time of his separation from service shall be deemed to receive a cash-out in the amount of $0 under this subsection 6.8(a) as of the date of such separation from service.

(b) For purposes of paragraph 6.8(a), the present Equivalent Actuarial Value of a Participant's vested accrued benefit shall be calculated using the mortality assumptions set forth in section 1.29 and the Applicable Interest Rate.

(c) If a Participant receives a lump-sum distribution under paragraph 6.8(a), his Credited Service with respect to the vested accrued benefit distributed to him shall be disregarded in any subsequent determination of his accrued benefit under the Plan. Notwithstanding the foregoing, if a nonvested Participant who receives a lump-sum distribution of $0 under the preceding paragraph subsequently resumes employment as a Participant covered under this Plan before he has incurred five consecutive One-Year Breaks in Service, his prior Credited Service shall again be taken into account in determining his accrued benefit under the Plan.

(d) A Participant who receives a distribution pursuant to paragraph 6.8(a) and who is subsequently reemployed by CIGNA Cor-

poration or a Related Company shall have the right to restore any Credited Service disregarded under paragraph 6.8(c) (including, with respect to any accrued benefits related to such restored Credited Service, all optional forms of benefits and subsidies relating to such benefits). To restore disregarded Credited Service, a Participant must repay to the Plan the full amount of the distribution plus interest, compounded annually from the date of the distribution to the date of repayment at the rate of interest determined in accordance with Code Section 411(a)(11)(13)(ii). Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is, subsequently reemployed by CIGNA Corporation or a Related Company or the date the Participant incurs five (5) consecutive One-Year Breaks in Service following the date of distribution.

6.9 Direct Rollovers.

(a) General Rule

This section 6.9 shall apply to distributions made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a Distributee's election under this section 6.9, a Distributee may elect, at the time and in the manner prescribed by the Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) Definitions

The following definitions shall apply for purposes of this section 6.9:

(1) "Eligible Rollover Distribution" shall mean any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution shall not include (A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more, (B) any distribution to the extent such distribution is required under Code Section 401(a)(9), and (C) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(2) "Eligible Retirement Plan" shall mean an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the Distributee's

Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan shall be an individual retirement account or individual retirement annuity.

(3) "Distributee" shall include an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order shall be Distributees with regard to the interest of the spouse or former spouse.

(4) "Direct Rollover" shall mean a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

Article VII - Surviving Spouse Benefits

7.1 Qualified Preretirement Survivor Annuity

(a) General Rule

If a married Participant dies after earning a vested accrued benefit and before his Benefit Commencement Date, his surviving Spouse shall be entitled to receive a survivor annuity for the life of such Spouse. The survivor annuity shall be payable whether or not the Participant was an Employee, at the time of his death, but shall not be payable unless the Par-

ticipant and his Spouse were married throughout the one-year period ending on the Participant's date of death. The amount of the survivor annuity and the time of commencement of payment shall be determined under paragraph 7.1(b) or (c), whichever is applicable.

To the extent that the Plan treats the former spouse of a Participant as that Participant's Spouse for purposes of Code Sections 401(a)(11) and 417 pursuant to a Qualified Domestic Relations Order, the Participant's actual Spouse shall not be treated as the Participant's Spouse for such purposes. If, pursuant to a Qualified Domestic Relations Order, more than one individual is a designated Spouse, then the amount of the survivor annuity payable under this section 7.1 shall not exceed the amount which would be paid if there were only one surviving Spouse.

(b) Death after Earliest Retirement Age

If the Participant dies after his earliest retirement age, the amount of the survivor annuity shall be equal to the amount which the Spouse would have received if the Participant, having made no election under paragraph 6.2(b), had retired with a benefit payable in the QJSA form (or such other joint and survivor annuity as actually elected by the Participant under subparagraph 6.2(a)(2)) in effect on the day before his death. The survivor annuity shall be paid to the Participant's Spouse beginning as of the first day of the month

after his death and shall continue for each following month, with the final payment to be made as of the first day of the month in which the Spouse dies. A Participant's "earliest retirement age" shall mean the earliest age at which the Participant could have elected to begin receiving retirement or termination benefits under Article IV, based on his actual years of Eligible Service (from and after December 31, 1993, his actual Years of Vesting Service) at his death.

(c) Death on or about Earliest Retirement Age

If the Participant dies on or before his earliest retirement age (as defined in paragraph 7.1(b)), the amount of the survivor annuity shall be equal to the amount which the Spouse would have received under section 6.2 if the Participant had:

(1) Separated from service on his date of death (or his actual date of separation, if earlier);

(2) Survived to his earliest retirement age;

(3) Retired at his earliest retirement age with an immediate retirement benefit payable in the QJSA form (or such other joint and survivor annuity as actually elected by the Participant under subparagraph 6.2(a)(2)) in effect; and

(4) Died on the following day.

The survivor annuity shall be paid to the Participant's Spouse beginning as of the

first day of the month containing the Participant's earliest retirement age and shall continue each following month, with the final payment to be payable as of the first day of the month in which the Spouse dies.

(d) Spousal Consent to Annuity Commencement

Notwithstanding the provisions of paragraphs 7.1(b) and (c), survivor annuity payments shall not begin before the date on which the Participant would have attained his Normal Retirement Age unless the Spouse consents to the beginning of such payments at an earlier date. If the Spouse elects to defer commencement of the survivor annuity beyond the date provided under paragraph 7.1(b) or (c), the amount of the survivor annuity shall be adjusted, to reflect the amount of benefit in the form of such qualified joint and survivor annuity which would have been payable to the Participant on the deferred commencement date. Such adjustment shall be made in accordance with:

(1) The applicable Early Retirement Reduction Factors set forth in the tables in paragraph 4.3(a)(2) (paragraph 4.3(a)(5), for the Spouse of a New Formula Participant), for the Spouse of a Participant who is an Employee when he dies; or

(2) The applicable rules under paragraphs 4.4(c), (d) or(e) (depending on which rules would determine the Participant's termination

benefits had he not died), for the Spouse of a Participant who is not an Employee when he dies.

(e) Availability of Qualified Survivor Annuity

A Participant's surviving Spouse who is eligible for a survivor annuity under paragraph 7.1(a) will receive a survivor annuity benefit under this section 7.1 only if:

(1) The Spouse is not eligible for any other surviving Spouse benefit provided in Article VII; or

(2) The benefit provided under this section 7.1 is larger than any other surviving Spouse benefit under Article VII for which the Spouse may be eligible. For purposes of measuring which benefit is larger, each benefit will be discounted to present value using PBGC immediate annuity rates in effect as of the first day of the month in which the Participant died.

If subparagraph 7.2(e)(2) is applicable, the Spouse shall only be eligible for the survivor annuity under section 7.1 and not for any other survivor benefit described in Article VII.

(f) Subsidized Survivor Annuity

Participant who survives to his Benefit Commencement Date shall not have his benefit under Article IV reduced on account of, nor shall he otherwise bear any cost due to, the availability of the qualified preretirement survivor annuity under this section 7.1. Such qualified preretirement

survivor annuity shall be fully subsidized by Participating Companies.

7.2 Preserved Surviving Spouse Benefits – Pre-1985 Eligible Service

(a) General Rule

The surviving Spouse of a Participant (other than a New Formula Participant) with Eligible Service before January 1, 1985 will receive a Surviving Spouse Benefit as described in paragraphs 7.2(b) and (c) if all of the following requirements are met when the Participant dies:

(1) The Participant has been married to such Spouse throughout the one-year period ending on his date of death or his Benefit Commencement Date, whichever is earlier;

(2) The Participant has attained age thirty (30); and

(3) If the Participant dies after his termination of employment, he:

(A) was eligible for a normal retirement benefit under section 4.2, or

(B) was eligible for an early retirement benefit under section 4.3, or

(C) was a Participant in the Prior Aetna Plan or CG Plan on December 31, 1982, was hired before November 1, 1978, and remained an Eligible Employee

until his fifty-fifth (55th) birthday.

(b) Amount of Surviving Spouse Benefit

The amount of the Surviving Spouse Benefit under paragraph 7.2(a) shall be computed as set forth below and shall be based on the Participant's age and employment status at death, subject to the special provisions of sections 7.4 and 7.5, if applicable.

(1) If the Participant dies before his fifty-fifth (55th) birthday and prior to his termination of employment, the yearly amount will be equal to thirty percent (30%) of the Participant's Ultimate Retirement Benefit.

(2) If the Participant dies on or after his fifty-fifth (55th) birthday but prior to his termination of employment, Retirement Date or Normal Retirement Age, whichever is earliest, the yearly amount will be equal to the greater of:

(A) Thirty percent (30%) of the Participant's Ultimate Retirement Benefit, or

(B) Fifty percent (50%) of the Participant's Adjusted Retirement Benefit, as reduced for the QJSA form of payment as if the Participant's Benefit Commencement Date occurred on the day before the day of his death.

(3) If the Participant dies on or after attaining his Normal Retirement Age but prior to his Benefit Commencement Date, the yearly amount will be equal to 50% of the retirement benefit the Participant would have received had he retired on the day before the date of his death and had his retirement benefit been payable in the QJSA form.

(4) If a Participant described in either subparagraph 7.2(a)(3)(B) or 7.2(a)(3)(C) dies on or after his termination of employment, the yearly amount will be equal to thirty percent (30%) of the Participant's Ultimate Retirement Benefit.

(5) If a Participant described in subparagraph 7.2(a)(3)(A) dies on or after his termination of employment, the yearly amount will be equal to thirty percent (30%) of the Participant's retirement benefit as computed in the QJSA form.

(6) However, if the Spouse is more than ten (10) full years younger than the Participant, the thirty percent (30%) referred to in subparagraphs 7.2(b)(1), 7.2(b)(2)(A), 7.2(b)(4) and 7.2(b)(5) will be reduced in accordance with the following schedule:

Number of Full years by which Participant's Spouse is Younger than the Participant	Percentage
11	29%
12	28%
13	27%
etc.	etc.

(c) Duration of Spouse Benefit

Spouse Benefit payments determined in paragraph 7.2(b) will be payable monthly with each payment equivalent to one-twelfth (1/12) of the yearly amount. The Benefit Commencement Date will be the first of the month next following the Participant's death, with subsequent payments being made monthly thereafter until the date of the Spouse's death.

7.3 Preserved Surviving Spouse Benefit - 1985 to 1988 Eligible Service

(a) General Rule

The surviving Spouse of a Participant (other than a New Formula Participant) whose Eligible Service commenced after December 31, 1984, but before January 1, 1989, will receive a surviving Spouse benefit as described in paragraphs 7.3(b) and (c) if all of the following requirements are met when the Participant dies:

(1) The Participant has been married to such Spouse throughout the one-year period ending when he dies;

(2) The Participant has completed at least ten (10) years of Eligible Service (from and after December 31, 1993, at least ten (10) Years of Vesting Service); and

(3) Participant is an Employee when he dies, or he dies after Retirement but before his Benefit Commencement Date.

(b) The surviving Spouse benefit under paragraph 7.3(a) will be calculated as follows:

(1) Two percent (2%) of the Participant's Final Average Eligible Earnings, multiplied by the Participant's Credited Service, not to exceed thirty (30) years, is multiplied by the appropriate Early Retirement Reduction Factor as described in the table in subparagraph 4.3(a)(2) using Participant's age at death (but in no event shall the Early Retirement Reduction Factor be lower than the age 55 factor, regardless of the Participant's age at his death). The result represents the yearly retirement benefit payable prior to the Participant's Normal Retirement Date for purposes of section 1.5 and subparagraph 7.3(b)(3).

(2) Two percent (2%) of the Participant's Final Average Eligible Earnings, multiplied by the Participant's Credited Service, not to exceed thirty (30) years, is reduced by one-half (1/2) of the annual primary old age insurance

benefit which Participant would have received at age sixty five (65), determined as of his date of death based upon the provisions of the Social Security Act in effect on his date of death; provided, that for purposes of this formula, the Participant's annual primary old age insurance benefit shall be accrued ratably over a period of thirty-five (35) years. The result represents the yearly retirement benefit payable on and after the Participant's Normal Retirement Date for purposes of section 1.5 and subparagraph 7.3(b)(3).

(3) The results produced under subparagraphs 7.3(b)(1) and (2) will be actuarially converted to the Adjusted Retirement Benefit form of single life annuity as described in section 1.5.

(4) The single life annuity form produced under subparagraph 7.3(b)(3) will be actuarially adjusted in order to restate the benefit in the QJSA form.

(5) The surviving Spouse benefit under paragraph 7.3(a) is the survivor annuity under the QJSA form described in subparagraph 7.3(b)(4). Such benefit is payable commencing in the month following the Participant's death, regardless of the Participant's age at his death.

(c) The surviving Spouse benefit under this section 7.3 shall be in the form of monthly payments for the life of the Spouse. Such

payments shall commence as of the first of the month following Participant's date of death.

7.4 Special Spouse Benefit for INA Plan Participants

(a) A special surviving Spouse benefit shall be payable to the surviving Spouse of a Participant who was a Participant in the Prior INA Plan on December 31, 1982, provided that Participant had met the requirements in subparagraphs 7.4(a)(1) or (2).

(1) The Participant dies while employed by a Participating Company as an Eligible Employee and, as of December 31, 1982, had both attained age fifty (50) and completed at least fifteen (15) years of Eligible Service.

(2) The Participant dies after his Retirement from a Participating Company prior to attaining age sixty-five (65) and, as of December 31, 1975 had both attained age fifty-five (55) and completed at least fifteen (15) years of Eligible Service.

(b) The special surviving Spouse benefit shall be an annual benefit, payable in monthly installments with a Benefit Commencement Date as of the first of the month following the Participant's death and continuing during the Spouse's lifetime, equal to twenty-five percent (25%) of the Participant's Eligible Earnings for the last twelve (12) calendar months of employment with CIGNA Corporation or a Related Company prior to his death, reduced, beginning with the month in which the Spouse becomes

eligible therefor (irrespective of whether benefits are actually paid), by fifty percent (50%) of the unreduced annual widow's or widower's benefit to which the Spouse is entitled under the provisions of the Social Security Act in effect at the Participant's death, provided that:

(1) If the surviving Spouse is more than ten (10) years younger than the deceased Participant, the benefit shall be reduced by one (1) percentage point for each year or major fraction thereof by which the surviving spouse is more than ten (10) years younger than the Participant; and

(2) In the event that a Participant's Eligible Earnings are decreased due to inability to perform his accustomed duties, Eligible Earnings shall be deemed to be the Eligible Earnings for the last twelve (12) calendar months of employment with CIGNA Corporation or the Related Company prior to the decrease.

(c) If the conditions in paragraph 7.4(a) are met, the special surviving Spouse benefit under this section 7.4 shall be paid in lieu of any survivor annuity or surviving Spouse benefit described in sections 7.1 or 7.2 unless the amount of that survivor annuity or surviving Spouse benefit is greater than the special surviving Spouse benefit under this section 7.4 on the date payments begin, in which case paragraph 7.4(b) will not apply.

7.5 Special Post-65 Spouse Benefit For INA Plan Participants

(a) A special post-65 surviving Spouse benefit shall be payable to the surviving Spouse of a Participant who was a Participant in the Prior INA Plan on December 31, 1982, if the requirements of paragraphs 7.5(a), 7.5(b) and 7.5(c) are met:

(1) The Participant had attained age fifty-five (55) and had at least fifteen (15) years of Eligible Service on December 31, 1975, and

(2) The Participant dies on or after attainment of age sixty-five (65) and following Retirement, and

(3) The surviving Spouse shall have been married to the Participant prior to age sixty-five (65), the date of marriage shall be at least one (1) year prior to the date of death, and no divorce or legal separation shall be in effect at the death of the Participant.

(b) The special post-65 surviving Spouse benefit shall be an annual benefit, with a Benefit Commencement Date as of the first of the month following the Participant's death and continuing during the Spouse's lifetime in monthly installments, equal to forty percent (40%) of the Participant's retirement benefit at the date of death on the basis of the life annuity form, provided that:

(1) If the surviving Spouse is more than ten (10) years younger than the de-

ceased Participant, the benefit shall be reduced by one (1) percentage point for each year or major fraction thereof by which the surviving Spouse is more than ten (10) years younger than the Participant; and

(2) If the surviving Spouse shall remarry, the Spouse Benefit shall cease unless the Spouse and the Participant had been married at least five (5) years prior to the Participant's death.

(c) If the requirements in paragraph 7.5(a) are met, the special post-65 surviving Spouse benefit shall be paid to the Spouse in lieu of any survivor annuity or surviving Spouse benefit described in sections 7.1 or 7.2 above unless the amount of that survivor annuity or Spouse Benefit is greater than the special Post-65 Spouse Benefit on the date payments begin, in which case paragraph 7.5(b) will not apply.

7.6 Death of Spouse

If the Participant's Spouse dies before the date when any survivor annuity or other surviving Spouse benefit payments are to begin under Article VII, no survivor annuity or other surviving Spouse benefit shall be payable to anyone under Article VII.

Article VIII - Vesting

8.1 Vesting of Benefits

(a) A Participant's accrued benefit shall be fully vested on the date he attains Normal

Retirement Age, provided he is an Employee on that date.

(b) The accrued benefit of a Participant who has not attained Normal Retirement Age shall be fully vested upon his completion of five (5) years of Eligible Service (from and after December 31, 1993, five (5) Years of Vesting Service).

(c) In no event may a Participant be divested for cause of retirement income or other benefits which he is eligible to receive.

(d) The following Participants who were affected by a sale of the stock or assets of a Participating Company shall be fully vested as of the dates indicated in any retirement benefits which such Participant has accrued as of the dates indicated under Article IV of the Plan:

(1) As of September 30, 1992, and with respect to accrued benefits as of that date, for any Participant who was an active employee of International Benefit Services Corporation as of September 30, 1992, and who remained an active employee of that company immediately after its sale;

(2) As of January 7, 1994, and with respect to accrued benefits as of that date, for any Participant who was an active employee of Montgomery & Collins, Inc., or one of its subsidiaries which participated in the Plan and who remained employed by the purchaser of those companies on January 7, 1994;

(3) As of January 24, 1994, and with respect to accrued benefits as of that date, for any Participant who was an active employee of the Insurance Company of North America ("INA") as of January 24, 1994, and whose employment with INA terminated on account of the sale by INA of its contract surety bond operations on that date and who became employed by the buyer of those operations in January, 1994;

(4) As of November 30, 1994, and with respect to accrued benefits as of that date, for any Participant who was an active employee of CIGNA Healthcare of Kansas/Missouri, Inc., as of November 30, 1994, and who became employed by the purchaser of that company's Wichita, Kansas, assets on that date;

(5) As of November 18, 199[illegible], and with respect to accrued benefits as of that date, for any Participant who was an active employee of CIGNA Healthcare of Washington, Inc., as of October 31, 1994, and who became employed by the purchaser of that company on November 18, 1994.

8.2 Forfeitures

A Participant who terminates employment with CIGNA Corporation or a Related Company, who has no vesting at that time and who is not reemployed by CIGNA Corporation or a Related Com-

pany shall forfeit all benefits except those derived from Required Employee Contributions, Voluntary Non-Deductible Employee Contributions and Voluntary Deductible Employee Contributions.

Article IX - Death Benefits and Beneficiary Provisions (OTHER THAN SURVIVING SPOUSE BENEFITS CONTAINED IN ARTICLE VII)

9.1 Death Before Benefit Commencement Date

If a married Participant who dies before his Benefit Commencement Date has met all the requirements of Article VII when he dies, benefits will be paid to his Spouse in accordance with Article VII. Upon the death of the Spouse, the Participant's Beneficiary will receive a refund equal to the excess, if any, of (a) over (b) below, where:

(a) is the Participant's Required Employee Contributions under the Aetna Plan or CG Plan which have not been refunded together with Credited Interest computed thereon to his date of death; and

(b) is the sum of the survivor annuity or other surviving Spouse benefit payments made to the Spouse.

If a Participant, whether married or unmarried, who dies before his Benefit Commencement Date has not met all the requirements of Article VII when he dies, so that no Spouse is eligible for any benefits under Article VII, the Participant's Beneficiary will receive a refund of the Participant's Required Employee Contri-

butions under the Prior Aetna Plan or CG Plan which have not been refunded, together with Credited Interest computed thereon to the date of the Participant's death.

9.2 Death On or After Benefit Commencement Date

Upon the death, after the Benefit Commencement Date, of the last of the Participant or the Spouse (who was eligible to receive benefits in accordance with Article VII or who was the survivor of a survivor annuity form of benefit) or the contingent survivor of the contingent survivor form of benefit, the Participant's Beneficiary will receive a refund equal to the excess, if any, of (a) over (b) below, where:

(a) is the Participant's Required Employee Contributions under the Prior Aetna Plan or CG Plan which have not been refunded together with Credited Interest computed thereon to his Benefit Commencement Date; and

(b) is the sum of retirement benefit and surviving Spouse benefit payments made to the Participant and Spouse and/or contingent survivor, if any.

9.3 Beneficiary

(a) If there is a death benefit which may become payable to a Beneficiary from the Participant's Required Employee Contributions to the Plan or Prior Plans the Participant will designate a Beneficiary, and may change from time to time his designation of Beneficiary, by filing a written no-

tice with the Plan Administrator or his delegate.

(b) If a death benefit becomes payable, it shall be paid to the Beneficiary most recently designated by the Participant, if then living. If a designated Beneficiary is not living at the time a death benefit becomes payable, or if no Beneficiary has been designated, the death benefit shall be paid to the Participant's widow or widower if living; otherwise in equal shares to surviving natural or adopted children of the Participant; otherwise in equal shares to the surviving parents of the Participant; and in the event none of the above named individuals survive, the death benefit shall be paid to the executor or administrator of the estate of the Participant or, if the Participant's Spouse or contingent survivor becomes eligible to receive retirement benefits or surviving Spouse benefits, to the executor or administrator of the estate of the Spouse or contingent survivor.

Article X - Funding

10.1 Contributions

In accordance with the funding requirements of ERISA, the Participating Companies shall make contributions to the Trust in order to provide the retirement benefits described in the Plan, except to the extent that the Secretary of the Treasury may waive the funding standards or that the Secretary of Labor may extend the period for compliance with such standards.

10.2 Time of Contributions

The Participating Companies shall make payment of contributions to the Trust for any Plan Year at such time or times as may be required under Code Section 412 and Treasury Regulations thereunder.

10.3 Contributions Irrevocable -- Limited Refunds

Except as provided below and in paragraph 16.2(g), all contributions of Participating Companies to the Trust shall be irrevocable. Such contributions and any income therefrom shall be held for the exclusive purpose of providing benefits to Participants in the Plan and their Beneficiaries and defraying reasonable expenses of administering the Plan. Contributions shall be refunded to the Participating Companies under the following circumstances and subject to the following limitations:

(a) All contributions to the Plan are conditioned on their deductibility under Code Section 404 or any successor provision. To the extent that a Federal income tax deduction for any contribution is disallowed by the Internal Revenue Service, the Trustee shall refund to the Participating Companies the amount so disallowed within one year of the date of such disallowance, upon presentation of evidence of disallowance and a demand by the Participating Companies for such refund.

(b) If any contributions are made by a Participating Company in whole or in part by reason of a mistake of fact, so much of

such contributions as are attributable to the mistake of fact shall be returned to the Participating Company on demand, upon presentation of evidence by the Participating Company of the mistake of fact to the Trustee; provided, however, that such demand and repayment must be effectuated within one year after the payment of the contributions to which the mistake applies.

The amounts which may be returned to a Participating company under paragraphs 10.3(a) and (b) shall be the excess of the amounts contributed over the amounts that would have been contributed had there not been a mistake of fact or mistake in determining the deduction, as applicable. No earnings on the mistaken or non-deductible contributions may be returned to a Participating Company, and net losses sustained by the Trust after the date of contribution shall proportionately reduce the amount which may be returned to a Participating Company.

All refunds under this section 10.3 shall be limited in amount, circumstance, and timing as required by ERISA Section 403(c), and no such refund shall be made if, solely on account of such refund, the Plan would cease to be a qualified plan under Code Section 401(a).

10.4 Use of Forfeitures

No amount forfeited by a Participant in the Plan through death or separation from service before his accrued benefit has vested shall be used to increase the benefits which other Participants would otherwise receive under the Plan. Such forfeited amounts shall be used as soon as possi-

ble to reduce the contributions of the Participating Companies under the Plan.

Article XI - Participant Contributions

11.1 Participant Contributions in General

Participants are not required to contribute to the Plan as a condition of employment, plan membership or accrual of benefits following the Restatement Date or the date a Prior Plan became non-contributory.

Section 11.2 contains provisions applicable to the Required Employee Contributions to the Aetna and CG Plans. Section 11.3 contains provisions applicable to the Required Employee Contributions to the PEG Plan. Section 11.4 contains provisions applicable to the Voluntary Non-Deductible Employee Contributions to the Aetna and CG Plans and to this Plan until March 31, 1983. Article XII contains provisions applicable to Voluntary Deductible Employee Contributions to the Aetna and CG Plans and to this Plan until March 31, 1987. Section 11.5 contains provisions applicable to vesting in these contributions.

11.2 Required Employee Contributions to the Aetna and CG Plans

(a) Required Employee Contributions accumulated under the Aetna and CG Plans shall be retained in the Group Annuity Contract and held in the Plan Trust. These Required Employee Contributions shall be held in a separate individual account in the name of each Employee who made such contributions, and Credited Interest

on such contributions shall be added to the Employee's contributions as follows:

(1) Interest is not credited before January 1, 1976 with respect to Required Employee Contributions made before January 1, 1946.

(2) The rate of Credited Interest on Required Employee Contributions made on and after January 1, 1946 shall be 2% per year compounded on each January 1 for months before January 1, 1961, and shall be 3% per year compounded on each January 1 for months in the period beginning January 1, 1961 through January 1, 1976.

(3) The rate of Credited Interest on Required Employee Contributions after January 1, 1976 shall be 5% per year compounded on each January 1 until such interest rate is changed by the Plan Administrator.

(4) The Plan Administrator, subject to the terms of the Group Annuity Contract may from time to time determine and announce changes in the rate of Credited Interest on Required Employee Contributions which rate will apply in a uniform manner, but only to interest allowed for months occurring after the effective date of the change.

(5) A Participant who terminates his employment or retires may elect prior to his Retirement Date to receive a

lump sum refund of his Required Employee Contributions to the Aetna Plan or to the CG Plan, together with all Credited Interest computed thereon to the first day of the month in which money is paid out. Upon election of such refund, however, the Participant will forfeit the years and months of Credited Service equivalent to the period of service for which the Employee's Required Contributions to the Plan were refunded.

(b) If a Participant who has made Required Employee Contributions to the Prior Aetna or CG Plan terminates employment and is not eligible to receive any retirement benefit from this Plan under Article IV, and if the Participant elects not to receive a lump sum refund of his Required Contributions to the Prior Plans, the Participant will still be eligible to receive retirement income benefits from this Plan commencing on his Normal Retirement Date. The benefit is an amount equal to the Participant's accrued benefit from Required Employee Contributions, which is the actuarial equivalent of the value of his Required Employee Contributions plus Credited Interest.

11.3 Required Employee Contributions to the PEG Plan

(a) Required Employee Contributions accumulated under the PEG Plan shall be retained in the Trust for this Plan. Such Required Employee Contributions shall not

be maintained in separate accounts for each contributing Employee.

(b) If a former PEG Plan participant who made Required Employee Contributions to the PEG Plan withdrew his Required Employee Contributions from the Plan before January 1, 1968, the benefit payable from this Plan shall be reduced by the annual lifetime benefit which is the Actuarial Equivalent value of the Required Employee Contributions which were withdrawn from the Plan.

11.4 Voluntary Non-Deductible Employee Contributions

(a) Each Eligible Employee who was an active participant in the CG Plan or Aetna Plan on December 31, 1982 was eligible to make Voluntary Non-Deductible Employee Contributions. Such Eligible Employees may continue to make such Voluntary Non-Deductible Employee Contributions to this Plan, but no new Voluntary Non-Deductible Employee Contributions shall be deposited in the Plan for periods of employment after March 31, 1983.

(b) Such Voluntary Non-Deductible Employee Contributions shall be retained in the Plan until the Employee's death, termination of employment, or Retirement, unless otherwise withdrawn pursuant to terms of the Group Annuity Contract.

(c) The Voluntary Non-Deductible Employee Contributions shall be entered into an individual account in the name of each contributing Employee. The voluntary contri-

butions shall be made, administered and distributed in the manner provided in a Group Annuity Contract(s) issued by Connecticut General Life Insurance Company or another contract issued by a life insurance subsidiary of CIGNA Corporation, and shall be subject to the terms and conditions set forth therein. The Employee's individual account shall be credited with investment results in the manner provided in a Group Annuity Contract(s).

(d) Voluntary Non-Deductible Employee Contributions and investment results credited to the Employee's account shall be used to provide additional benefits beyond those accrued benefits payable under Article IV of this Plan.

(e) All Voluntary Non-Deductible Employee Contributions and investment results credited to the Employee's account that were retained in the Plan through December 31, 1993, were transferred to the Savings and Investment Plus Plan as of that date.

11.5 Vesting in Participant Contributions

Each Participant shall have a 100% vested interest at all times in the amount of his Required Employee Contributions, Voluntary Non-Deductible Employee Contributions, and in the investment results and/or Credited Interest attributable to those contributions, or, if applicable, in the accrued benefit attributable to such Required Employee Contributions.

11.6 Forms of Payment

(a) Notwithstanding any provisions to the contrary, any benefits under Article XI, shall be distributed as follows:

(1) In the Qualified Annuity form as described in paragraph 6.2(a).

(2) Should a married Participant die before payment of benefits commences, the entire balance of Participant's account shall be distributed to his Spouse in the form of a single life annuity unless the Plan Administrator approves payment in another available form. For purposes of this section, a married Participant is one who has been married to his Spouse for at least one year ending on the date his benefit payments commence or his date of death.

(b) A Participant may, in accordance with section 6.2(b), elect another available form of benefit instead of the Qualified Annuity form.

Article XII - Voluntary Deductible Employee Contributions

12.1 Definitions

For purposes of Article XII, the following definitions apply:

(a) "Annuity Contract" shall mean the Group Annuity Contract, as amended from time to time, issued by the Insurance Company to fund the benefits provided under Article XII.

(b) "Beneficiary" shall mean the person(s) entitled to any benefits from a Participant's Account upon the death of a Participant or Beneficiary.

(c) "Insurance Company" shall mean Connecticut General Life Insurance Company, or another life insurance company subsidiary of CIGNA Corporation.

(d) "Participant's Account" shall mean a Participant's individual account maintained under the Annuity Contract by the Insurance Company. Each Participant's Account will reflect the amount attributable to Deductible Contributions and related earnings and shall be equal to the sum of the amounts in all of the Participant's investment accounts under the Annuity Contract.

12.2 Eligibility and Participation

(a) Effective January 1, 1982, the Aetna and CG Plans allowed participants to make Deductible Contributions. Effective January 1, 1983, such participants who became Participants in this Plan continued to be eligible to make Deductible Contributions to this Plan. Effective April 1, 1983, all other Participants in this Plan became eligible to make Deductible Contributions.

(b) Effective March 31, 1987, no further Deductible Contributions under Article XII were permitted. Deductible Contributions accumulated before that date continued to be held in the Plan Trust under the provisions of Article XII. Effective December 31, 1993, all accumulated Deductible Contri-

butions and related investment gains were transferred to the Savings and Investment Plus Plan. The provisions herein are applicable to Participants' accumulated Deductible Contributions and related investment gains for the period held under this Plan and Trust.

12.3 Voluntary Deductible Employee Contributions

Voluntary Deductible Employee Contributions were voluntary amounts contributed by Participants which amounts the Participant designated in writing and which were eligible for a tax deduction under Code Section 219. Such amounts contributed by a Participant shall retain their designation or characterization as Deductible Contributions, and the Participant may not subsequently elect to treat such contributions as Employee or Participant contributions under any other provision of the Plan which permits Employee or Participant Contributions.

12.4 Cancellation of Deductible Contributions

A Participant may cancel his participation in the Deductible Contribution portion of the Plan at any time by filing written notice thereof with the Plan Administrator. With the written permission of the Participant, such cancellation shall be effective on the date specified in such notice, which date must be at least thirty (30) days after such notice, if filed. On the effective date of such cancellation, and in accordance with the election signed by the Participant, an amount equal to the then value of that portion of his Participant's Account attributable to his Deductible Contributions, including any gains thereon, shall be dis-

tributed to the Participant in accordance with the terms and conditions of this Article.

12.5 Annuity Contract

CIGNA Corporation maintained an Annuity Contract with the Insurance Company to fund the benefit entitlements under this Article XII. All Deductible Contributions were made to CIGNA Corporation or the Participating Company, as appropriate, and then paid to the Insurance Company. All payments to Participants and/or Beneficiaries, payable under the terms of this Article XII out of Participants' Accounts, were payable by the Insurance Company.

12.6 Participant's Account

A Participant's Account shall be maintained on behalf of each Participant until such Account is used to provide an annuity, or distributed in accordance with the further terms of this Article and the terms of the Annuity Contract. The Participant shall have the right to decide the investment account into which his Deductible Contributions are allocated. Where permitted by the terms and limitations of the Annuity Contract, amounts in a Participant's Account may be transferred among the available investment accounts twice during a calendar year, where applicable. The Participant may designate the portions to be transferred.

12.7 Reports to Plan Administrator and Participants

Once during each year the Insurance Company shall furnish the Plan Administrator and each Participant with a written report of the values in each such Participant's investment account.

12.8 Vested Interest

The Deductible Contributions credited to a Participant's Account and the earnings thereon, shall be 100% vested at all times and shall not be forfeitable.

12.9 Withdrawal of Deductible Contributions

On any date during each Plan Year a Participant may elect to withdraw from his Participant's Account any amount up to 100% of the value of that portion of his account attributable to his Deductible Contributions. Withdrawals may not be repaid. The Participant shall notify the Plan Administrator in writing of his election to make a withdrawal. Any such election shall be effective as of the date specified in such notice, which date must be at least fifteen (15) days after such notice is filed. Payment of the withdrawal shall be subject to the terms and conditions of section 12.10.

12.10 Distribution of Benefits

In the event of a Participant's Retirement, termination of employment or death, the Participant (or his Beneficiary in the event of the Participant's death) may elect to receive a distribution of his entire Participant's Account in the form of cash, an annuity, or a combination of cash and an annuity, as provided under the Annuity Contract. With the permission of the Plan Administrator, the Participant may make an election prior to receipt of the payment to defer such distribution until a later date to be specified by the Participant (or his Beneficiary).

Article XIII - Trust

13.1 Trust Agreement

A trust agreement shall be entered into between CIGNA Corporation and a named Trustee. The Trust established under the trust agreement shall be for the purposes of holding, managing and administering all monies (including Group Annuity Contracts) and other properties held by the Trustee for the exclusive benefit of the Participants and their Beneficiaries. All contributions under the Plan and all assets of the Plan shall be held in this Trust.

13.2 Payment Through Trustee

If any Plan benefits, as an annuity under the Group Annuity Contract, shall become payable to any Participant, Spouse or contingent survivor, such payee may elect that, in lieu of each payment being made directly to the payee, the right to such payments and to the annuity under which such payments are made shall be retained by the Trustee. In the event of such election, the Trustee shall make each benefit payment, in the amount otherwise provided herein, to such payee. Also, in such event, any certificate issued by the Insurance Company under the Group Annuity Contract shall provide that payments shall be made to the Trustee and each payment received by the Participant or Spouse or contingent survivor shall be deemed to constitute an installment payment of the payee's interest under the Plan and Trust, and no annuity shall be distributed or deemed to have been distributed to such payee.

13.3 Trustee-To-Trustee Transfers and Tax-Free Rollovers

(a) At the request of a Participant with an accrued benefit derived from Voluntary Non-Deductible Employee Contributions or Voluntary Deductible Employee Contributions, so long as such contributions are maintained in an individual Participant account for such Participant, and with the consent of the Plan Administrator, the Trustee may transfer the balance attributable to such contributions for such Participant to another qualified retirement plan of a Related Company, whether pension or profit sharing, in which the Participant is also a Participant, for subsequent distribution from that recipient plan.

(b) With the written permission of the Plan Administrator the Trustee may receive on behalf of a Participant all or part of the entire amount of (1) any distribution from a terminated Qualified Employee Plan; or (2) any lump sum distributions theretofore received by such Participant from a Qualified Employee Plan, either directly within sixty (60) days after receipt by such Participant, or through the medium of an Individual Retirement Account or annuity, provided that such assets to be transferred are in no way attributable to employment as a self-employed person and are attributable solely to employer contributions and earnings on Employee contributions under Qualified Employee Plans.

Such amounts rolled over pursuant to this paragraph 13.3(b) shall be maintained in a separate individual account for such Participant. The Participant shall have a nonforfeitable interest in such amounts together with investment results at all times.

Such amounts rolled over pursuant to this paragraph 13.3(b) shall be invested in the Annuity Contract issued to fund the benefit provided in Article XII. Such amounts shall be payable to the Participant pursuant to such Annuity Contract and such amounts shall be in addition to any other benefits provided under this Plan.

The provisions of this paragraph 13.3(b) shall be in effect only for the Plan Year commencing January 1, 1983 and ending December 31, 1983 (the 1983 Plan Year).

Article XIV - Fiduciary Responsibility Provisions

14.1 Corporate Benefit Plan Committee

As required by ERISA, CIGNA Corporation has appointed a named fiduciary of this Plan and, until otherwise changed by action of the Board of Directors, such named fiduciary is the Committee.

14.2 Role of Committee

The Committee shall have responsibility for the management, operation, and administration of the Plan, including the establishment of a funding policy. The Committee shall have the authority to allocate among Committee members, and

to delegate to committees, corporate departments, units, officers and/or employees of CIGNA Corporation or a Related Company, the managerial, operational, administrative and/or investment responsibility for the Plan. The Committee shall also have the authority to revoke such delegations and redelegate at any time and from time to time. In exercising its right to delegate, the Committee may appoint one or more fiduciaries and/or named fiduciaries.

14.3 Multiple Fiduciary Capacity

Any person or group of persons may serve in more than one fiduciary capacity with respect to this Plan. A named fiduciary (or a fiduciary designated by a named fiduciary) may employ or contract with one or more persons to render advice with regard to any responsibilities such fiduciary has under the Plan. A person who is a named fiduciary with respect to control and management of the assets of the Plan may appoint an investment manager or managers to manage any assets of the Plan. The investment manager may be CIGNA Corporation or a Related Company.

14.4 Delegation and Allocation of Fiduciary Responsibilities

CIGNA Corporation may allocate fiduciary responsibilities (other than trustee responsibilities) among named fiduciaries if there is more than one. A named fiduciary shall have the right to designate other persons to carry out fiduciary responsibilities under the Plan, provided, however, that claim review responsibility shall not be delegated to other than a named fiduciary. If any fiduciary responsibility of a named fiduciary is

allocated to any person or entity or a person or entity is designated to carry out such responsibility, then such named fiduciary shall not be liable for any act or omission of such person or entity in carrying out such responsibility, except as provided by ERISA.

14.5 Appointment of Committee Members

The Chief Executive Officer of CIGNA Corporation is authorized to appoint a chairman and members of the Committee who shall be officers of CIGNA Corporation or a Related Company. The Chief Executive Officer may revoke any such appointment, accept any resignation of any appointee, and appoint successors and/or additional members of the Committee, as he or she may deem necessary or appropriate from time to time.

14.6 Resignation and Termination of Employment of Fiduciary

Any person who is a fiduciary or a member of a Committee which is a fiduciary may resign from such duties or membership by giving reasonable notice. If such person is an employee of CIGNA Corporation or of a Related Company, such resignation shall not require a termination of employment. If such person does, however, terminate employment, his duties as a fiduciary or as a member of a Committee which is a fiduciary shall cease upon such termination of employment unless such person is reappointed to such fiduciary position or to such Committee by the appropriate person and/or fiduciary.

14.7 Limitation of Guarantees on Investments

No fiduciary guarantees the Fund in any manner against investment loss or depreciation of asset value.

Article XV - Plan Administration 15.1 Appointment and Acceptance

The Committee shall delegate to a Plan Administrator the duties, authority and functions set forth in this Article XV.

15.2 Duties and Authority; Discretionary Authority

The Plan Administrator shall administer the Plan on behalf of CIGNA Corporation in a nondiscriminatory manner for the exclusive benefit of Participants and their Beneficiaries. The Plan Administrator shall perform all such duties as are necessary to operate, administer and manage the Plan in accordance with the its terms, including but not limited to the following:

(a) To determine all questions relating to a Participant's participation and benefits under the Plan;

(b) To maintain or cause to be maintained all necessary records for the administration of the Plan;

(c) To compute and authorize the payment of retirement income and other benefit payments to eligible Participants and beneficiaries;

(d) To interpret and construe the provisions of the Plan and to make regulations which are not inconsistent with the terms thereof;

(e) To advise or assist Participants regarding any rights, benefits or elections available under the Plan;

(f) To provide the Participant an appropriate, written explanation in non-technical terms, within a reasonable period prior to the Benefit Commencement Date, of the notice required by paragraph 6.2(b);

(g) To take such actions as are necessary to establish and maintain the Plan as a retirement program which is at all times in full and timely compliance with any law or regulation having pertinence to this Plan;

(h) To have reasonable powers necessary or appropriate to accomplish its duties as a Plan Administrator, including delegation to, employment of, or contracting for the services of, others to assist in performing its duties; and

(i) To determine whether a domestic relations order served upon the Plan is a Qualified Domestic Relations Order, to place in escrow any benefits payable during the period of such determination, and to take such actions as may be necessary to comply with a Qualified Domestic Relations Order.

The Plan Administrator shall have sole discretion to carry out its responsibilities under Article XV, including responsibility to determine whether a person is eligible to participate in the Plan or eligible to receive benefits under the Plan; to determine the amount of benefits to which any Participant, Beneficiary, surviving Spouse, or contingent survivor might be entitled

under the Plan; to make findings of fact needed to make such determinations; and to interpret Plan terms and provisions, including disputed and doubtful terms. The Plan Administrator's decisions on all such matters, including any determinations, findings and interpretations, shall be final and binding on all parties.

15.3 Expenses and Assistance

All reasonable expenses necessary to operate and administer the Plan shall be borne by the Plan unless CIGNA Corporation elects to pay them. CIGNA Corporation shall furnish the Plan Administrator with such clerical and other assistance as is required in the performance of its duties.

15.4 Participants and Other Payees - Data

Participants and other persons affected by the Plan shall furnish the Plan Administrator upon request such documents, evidence or information which the Plan Administrator considers necessary or desirable for the purpose of administering the Plan. The Plan Administrator may cause to be withheld any benefit payment, otherwise due the Participant or other person, until the required document, evidence or other information is so furnished.

15.5 Claims Procedure

(a) Filing a Claim for Benefits

A Participant or Beneficiary shall notify the Plan Administrator or its delegate of a claim for benefits under the Plan. Such request may be in any form adequate to give reasonable notice to the Plan Administra-

tor or its delegate and shall set forth the basis of such claim and shall authorize the Plan Administrator or its delegate to conduct such examinations as may be necessary to determine the validity of the claim and to take such steps as may be necessary to facilitate the payment of any benefits to which the Participant or Beneficiary may be entitled under the Plan. The Plan Administrator shall make all determinations as to the right of any person to a benefit under the Plan.

(b) Denial of Claim

If the Plan Administrator denies in whole or in part any claim for benefits under the Plan by any Participant or Beneficiary, the Plan Administrator shall furnish the claimant with written notice of the decision not later than ninety (90) days after receipt of the claim, unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the claimant before the end of the initial ninety- (90-) day period. In no event shall such extension exceed the period of ninety (90) days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan Administrator expects to render the final decision.

The written notice of the denial of a claim shall set forth in a manner calculated to be understood by the claimant:

(1) The specific reasons or reasons for the denial;

(2) Specific reference to the pertinent Plan provisions on which the denial is based;

(3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(4) Appropriate information as to the steps to be taken if the claimant wishes to submit his claim for review.

(c) Appeals Procedure

A claimant or his authorized representative may request a review of the denied claim by the Plan Administrator. Such request shall be made in writing and shall be presented to the Plan Administrator not more than sixty (60) days after receipt by the claimant of written notice of the denial of the claim. The claimant shall have the right to review the pertinent documents and to submit issues and comments in writing. The Plan Administrator shall make its decision on review not later than sixty (60) days after receipt of the claimant's request for review, unless special circumstances require an extension of time, in which case a decision shall be rendered as soon as possible, but not later than 120 days after receipt of the request

for review. The decision on review shall be in writing and shall include the specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to pertinent Plan provisions on which the decision is based.

The Plan claims procedure shall be administered in accordance with the applicable regulations of the Department of Labor.

15.6 Clerical Error

If any fact pertaining to eligibility for an amount of benefits payable under the Plan to a Participant or other payee has been misstated, or in the event of clerical error, the benefits will be adjusted by the Plan Administrator or its delegate on the basis of the correct facts in a manner precluding individual selection.

Article XVI - Amendment and Termination

16.1 Amendment

CIGNA Corporation reserves the right to amend the Plan at any time and from time to time, in whole or in part, including without limitation, retroactive amendments necessary or advisable to qualify the Plan and its related Trust under the provisions of Code Sections 401 (a) and 501, respectively, or any successor or similar statute hereafter enacted. The Plan may be amended by: a resolution of the Board of Directors of CIGNA Corporation; a resolution of the People Resources Committee of the Board of Directors of CIGNA Corporation (or a successor committee); or by a written instrument approved and executed by

one or more duly authorized officers of CIGNA Corporation.

Notwithstanding the foregoing, and except to the extent that such amendment may be necessary to permit the Plan to qualify under Section 401(a) of the Code, or the Trust to qualify as tax exempt under Section 501 of the Code, or to permit the deduction of contributions under the provisions of any applicable internal revenue law:

(a) No such amendment shall cause any part of the assets of the Plan and the Trust to revert to or be recoverable by CIGNA Corporation or a Related Company, or (except as required to pay taxes or administrative expenses) to be used for, or diverted to purposes other than for, the exclusive benefit of Participants, former Participants and their Beneficiaries except as provided in section 10.3 and paragraph 16.2(g);

(b) No such amendment shall cause any reduction in the amount of any Participant's accrued benefit, except as permitted in Code Section 412(c)(8). For purposes of this subparagraph 16.1(a)(2), an amendment which has the effect of eliminating or reducing an early retirement benefit or retirement-type subsidy (as defined in regulations issued by the Secretary of the Treasury), or (2) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment, shall be treated as reducing accrued benefits, except as provided in Code Section 411(d)(6) and regulations thereunder.

(c) No such amendment shall change any vesting schedule unless, in the case of an Employee who is a Participant on (1) the date the amendment is adopted, or (2) the date the amendment is effective, if later, the vested percentage of such Participant's right to his accrued benefit is not less than such percentage computed under the Plan without regard to such amendment. Furthermore, no such amendment shall otherwise change any vesting schedule unless each Participant having three (3) or more years of Eligible Service (from and after December 31, 1993, three (3) or more Years of Vesting Service) is permitted to elect, in accordance with the Code and applicable regulations, to have the vested percentage of his accrued benefit determined without regard to such amendment; provided that no such election shall be given to any Participant whose vested percentage under the Plan as amended cannot at any time be less than such percentage determined without regard to such amendment.

(d) No such amendment shall materially increase the duties, powers, or liabilities of the Trustee without its written consent.

(e) No such amendment shall permit any part of the assets of the Plan or the Trust to be used to pay premiums or contributions to CIGNA Corporation or a Related Company under any other plan maintained by CIGNA Corporation or a Related Company for the benefit of its Employees.

16.2 Termination or Partial Termination

(a) Although CIGNA Corporation and each other Participating Company has established the Plan with the bona fide intention and expectation that it will continue the Plan indefinitely, nevertheless CIGNA Corporation and each other Participating Company shall not be under any obligation or liability or to continue the Plan or to maintain the Plan for any given length of time.

(b) CIGNA Corporation, by resolution of its Board of Directors or the People Resources Committee of its Board of Directors (or a successor committee), or by a written instrument executed by a duly authorized officer of CIGNA Corporation, may in its sole and absolute discretion terminate the Plan in whole or in part at any time without any liability for such termination. Upon termination or partial termination of the Plan, the rights of all affected Participants to benefits accrued to the date of such termination or partial termination shall become non-forfeitable (within the meaning of Treasury Regulations Section 1.411(a)-4). However, no Participant or other individual shall have recourse towards the satisfaction of any benefits accrued under the Plan other than from the Fund or the Pension Benefit Guaranty Corporation.

(c) In the event of complete termination of the Plan, and after any final expenses have been withdrawn from the Fund, CIGNA

Corporation shall cause the amount remaining in the Fund to be allocated according to the following categories, in the order given:

(1) First, there shall be allocated an amount necessary to provide each Participant's accrued benefit derived from the Participant's non-mandatory contributions.

(2) Second, there shall be allocated an amount necessary to provide each Participant's accrued benefit derived from the Participant's mandatory contributions.

(3) Third, there shall be allocated an amount necessary to provide retirement benefits for Participants and Beneficiaries who, three (3) years prior to the Plan termination date, were either receiving retirement benefits or would have been eligible to receive retirement benefits had the Participant retired more than three years (3) before the Plan termination date.

(For this purpose "retirement benefits" means retirement benefits, qualified preretirement survivor annuity benefits or other surviving Spouse benefits determined for the Participant or Beneficiary in accordance with provisions of the Plan in effect during the five- (5) year period ending on the Plan termination date

under which such benefits would be the least.)

(4) Fourth, there shall be allocated an amount necessary to provide all other retirement benefits guaranteed under Title IV of ERISA, as determined in accordance with Section 4044 thereof.

(5) Fifth, there shall be allocated an amount necessary to provide all other retirement benefits not guaranteed by the PBGC which are nonforfeitable in accordance with Article VIII, assuming that the Plan termination date is his termination of employment date.

(6) Sixth, there shall be allocated an amount necessary to provide all other retirement benefits under the Plan.

The amount necessary to provide the retirement benefit specified in each of the above categories shall be determined in accordance with annuity purchase rate assumptions in the Group Annuity Contract.

(d) Amounts allocated on a Participant's behalf under any category in paragraph 16.2(c) above shall be appropriately adjusted if:

(1) An amount has been allocated on such Participant's behalf under a prior category, and/or

(2) All or a portion of a Participant's or Beneficiary's retirement benefit or surviving Spouse benefit has been guaranteed under an insurance com-

pany contract prior to the Plan termination date.

If the amount available for allocation under any category is not sufficient to fully provide retirement benefits specified for such category, a pro-rata allocation of the amount available will be made and reduced retirement benefits will be provided to the extent possible.

(e) As provided by ERISA, the Internal Revenue Service may require that the Fund be allocated in a manner different than that specified above in order to meet nondiscrimination requirements.

(f) In the event a Participant elects a refund of his Required Employee Contributions under the Prior Aetna Plan or CG Plan together with Credited Interest after the Plan termination date, there will remain to his credit the amount of any retirement benefits provided by assets allocated on his behalf other than those attributable to his Required Employee Contributions.

(g) After the assets of the Fund have been withdrawn and allocated in accordance with preceding terms of this section, any amount remaining in the Fund will be returned to the Participating Companies.

(h) Notwithstanding the foregoing provisions, the amount of any retirement benefits or surviving Spouse benefit otherwise to be provided in accordance with this section will be restricted in accordance with section 16.3 to any extent required.

16.3 Limitations re Highly Compensated Employees

(a) Restriction of Benefits. In the event of Plan termination, the benefit of any highly compensated employee (as defined in Code Section 414(q) and the regulations thereunder, including any highly compensated former employee) shall be limited to a benefit which is nondiscriminatory under Code Section 401(a)(4).

(b) Restrictions on Distributions. Annual payments to a Restricted Participant shall be restricted to an amount equal to the payments that would be made on behalf of such Restricted Participant under a single life annuity which is of Equivalent Actuarial Value to the sum of the Restricted Participant's accrued benefit and his other Benefits under the Plan. However, the restrictions of this section 16.3(b) shall not apply if:

(i) after payment to such Restricted Participant of all Benefits, the value of Plan assets equals or exceeds 110% of the value of current liabilities (as defined in Code Section 412(1)(7)); or

(ii) The value of the Benefits for such Restricted Participant is less than one percent (1%) of the value of current liabilities.

(c) Definitions. The following definitions shall apply for purposes of this paragraph:

(i) "Restricted Participant" shall mean, for any Plan Year, any highly com-

pensated employee or highly compensated former employee, as defined in Code Section 414(q) and regulations thereunder; provided, however, that for any Plan Year, the total number of Restricted Participants shall be limited to a group of 25 highly compensated employees and highly compensated former employees. Such group shall consist of those highly compensated employees and highly compensated former employees with the greatest compensation.

(ii) "Benefit" shall include loans, if any, in excess of the amounts set forth in Code Section 72(p)(2)(A), any periodic income, any withdrawal values payable to a living Employee, and any death benefits not provided for by insurance on the Employee's life.

(d) Inapplicability of Restrictions. In the event that the provisions of this section 16.3 are no longer necessary to qualify this Plan under Code Section 401(a), this section 16.3 shall be ineffective without amendment to the Plan.

16.4 Withdrawal from Participation

(a) Each of the Participating Companies other than CIGNA Corporation, by action of its board of directors and upon notice in writing to the Plan Administrator, may elect to withdraw from participation in the Plan. The withdrawal of any Participating Company from participation in the Plan shall act to terminate the right of participation

in the Plan by the Employees of the withdrawing Participating Company after the notice of withdrawal is received.

(b) Whenever one of the Participating Companies elects to withdraw from the Plan, it shall, by action of this board of directors, file notice in writing with the Trustee and with the Plan Administrator of its election.

(c) In the event that CIGNA Corporation (by a resolution of the Board of Directors of CIGNA Corporation; a resolution of the People Resources Committee of the Board of Directors of CIGNA Corporation (or a successor committee); or by a written instrument approved and executed by one or more duly authorized officers of CIGNA Corporation) shall determine that one of the Participating companies shall no longer participate in the Plan, or if one of the Participating Companies is no longer eligible to participate in the Plan, the Participating Company shall withdraw from the Plan in the manner provided in paragraphs 16.4(a) and (b) within six (6) months thereafter. If withdrawal does not occur, the Plan Administrator shall direct that the Participating Company's participation in the Plan be terminated.

(d) Depending upon the circumstances of the withdrawal of the Participating Company, and taking into account whether the withdrawing Participating Company is terminating the plan, continuing the plan or replacing the plan, the Plan Administrator shall direct the Trustee to hold as a sepa-

rate Trust, segregate within the Trust or transfer to a successor Trust or Plan Administrator assets allocable to the Participants and their Beneficiaries of the withdrawing Participating Company, as the Plan Administrator deems appropriate.

(c) The withdrawal from the Plan by one of the Participating Companies other than CIGNA Corporation pursuant to the provisions of this Article XVI shall not affect in any manner the continuance of the Plan with respect to any of the other Participating Companies, and all the terms and conditions of the Plan shall continue to be applicable to such Participating Companies and their Employees as if such withdrawal and termination had not taken place.

16.5 Change of Control (Effective until July 26, 1989)

(a) Notwithstanding any other provision of this Plan, in the event of a Change of Control followed by any attempt directly or indirectly to return assets in the Fund to Participating Companies, including a termination of the Plan in whole or in part, other than under the provisions of section 10.3, no assets of the Fund shall be permitted to be returned to Participating Companies, or any of their successors, and no assets of the Fund shall be used for any purposes other than providing benefits to Participants or their Beneficiaries and defraying reasonable expenses of the Plan.

(b) In the event of a Change of Control followed by a termination of the Plan in

whole, assets of the Fund shall be withdrawn and allocated in accordance with section 16.2. After the provisions of section 16.2 have been applied, CIGNA Corporation shall cause any assets remaining in the Fund to be allocated according to the following categories in the order given:

(1) First, there shall be allocated an amount necessary to provide all former Participants and Beneficiaries whose Benefit Commencement Date occurred before the Plan termination date and who are still receiving benefits as of the Plan termination date a cost of living adjustment in their benefits payable under Articles IV or VII of this Plan equal to ten percent (10%) of the amount of the benefits they were receiving on the Plan termination date. Such cost of living adjustment shall be effective as of the Plan termination date. If there are insufficient assets in the Fund to provide a full ten percent (10%) adjustment, the amount of the adjustment shall be reduced to the level sufficient to exhaust all assets in the Fund.

(2) Second, there shall be allocated an amount necessary to provide an annual cost of living adjustment in any benefits payable under Articles IV and VII after the Plan termination date as follows:

(A) The annual cost of living adjustment shall be equal three percent (3%).

(B) An annual cost of living adjustment shall be made only to the benefits of persons:

i. whose Benefit Commencement Date has occurred, and

ii. who have attained the age equivalent to the Plan's Normal Retirement Age on or before the effective date of the adjustment.

(C) The effective date of the annual cost of living adjustment each year shall be January 1.

(D) If there are insufficient assets in the Fund to provide the full annual cost of living adjustment described above to all eligible benefit recipients, the percent in subparagraph 16.5(b)(2)(A) above shall be reduced from three (3) to a level sufficient to exhaust all remaining assets in the Fund.

(3) Third, there shall be allocated an amount necessary to provide all those who are active Participants on the Plan termination date additional Credited Service as follows:

(A) One year of Credited Service shall be added to the total Cred-

ited Service each such Participant has accumulated as of the Plan Termination Date, unless the Participant has accumulated in excess of twenty-nine (29) but less than thirty (30) years of Credited Service, in which case the Participant shall receive only the amount of Credited Service needed to bring his total Credit Service to thirty (30) years.

(B) If, after the adjustment to Credited Service in subparagraph 16.5(b)(3)(A) above, there remain additional assets in the Fund, an additional year of Credited Service shall be added to each such Participant's Credited Service in the manner described in subparagraph 16.5(b)(3)(A). Such adjustments to the Credited Service of such Participants shall continue, in whole-year increments, until either:

i. All assets of the Fund have been exhausted; or

ii. All such Participants have thirty (30) years of Credited Service.

(C) If, during any step in the adjustment process described in subparagraphs 16.5(b)(3)(A) and (A), there are insufficient assets

in the Fund to provide each such Participant with one full year of additional Credited Service, then for that step, each such Participant shall receive an additional fraction of a year of Credited Service. Such fraction shall be sufficiently large to exhaust all remaining assets in the Fund.

(D) In no event, however, shall any adjustment under this subparagraph 16.5(b)(3) raise any such Participant's Credited Service above thirty (30) years.

(4) Fourth, there shall be allocated an amount necessary to increase the benefit accrual formula under Article IV of the Plan for all those who are active Participants on the Plan termination date as follows:

(A) The number two percent (2%) in the normal retirement formula in Section 4.2(b)(1) and the early retirement formula in Section 4.3(a)(1) shall be changed to the Adjusted Accrual Rate;

(B) The Adjusted Accrual Rate shall be the number, expressed as a percent, which, when included in the normal and early retirement formulas, shall provide sufficient increases in retirement benefits for such Participants to absorb any assets

which may remain in the Fund after the allocations in paragraphs 16.5(b)(1), (2) and (3) above have been made.

(5) In no event, however, shall benefits for any Participant exceed the maximum retirement benefits permitted under Article V or the applicable provisions of Section 415 of the Internal Revenue Code.

(c) Before a Change of Control, the Plan may be amended in any manner regardless of its effect on rights or benefits created by this Section 16.5, and such rights or benefits shall not be treated in any manner as having accrued before a Change of Control. Following a Change of Control, however, no amendment to the Plan, other than as may be required by law, may be made which in any manner would adversely affect any rights or benefits under this Section 16.5.

16.6 Change of Control (Effective July 26, 1989)

(a) Notwithstanding any other provision of this Plan, in the event of a Change of Control:

(1) For a three (3) year period beginning on the effective date of a Change of Control, no action shall be taken by any Participating Company, Related Company, or successor to a Participating Company or Related Company which results, or might result, in:

(A) A termination of the Plan in whole or in part;

(B) The cessation of benefit accruals under the Plan; or

(C) Any reduction in the rate by which benefits accrue under the Plan.

(2) Other than under the provisions of Section 10.3 above and paragraphs 16.6(b) and 16.6(c) below, for a five (5) year period beginning on the effective date of a Change of Control, no action shall be taken by any Participating Company or Related Company which results, or might result, in:

(A) A reversion of assets of the Fund to any Participating Company, Related Company, or any successor of a Participating Company or related Company; or

(B) A diminution of the assets of the Fund other than by providing benefits to Participants or their Beneficiaries or by defraying reasonable expenses of the Plan.

(3) Actions precluded by subparagraph 16.6(a)(2) above include, but are not limited to: any reversion in the absence of a termination of the Plan; any merger of this Plan with another plan or plans or merger of another plan or plans with this Plan, if, using the same interest rate and mortality

assumptions for all plans as are used for this Plan as of the effective date of the Change of Control, such other plan or plans are less adequately funded than this Plan; and any change in actuarial funding method which changes the Plan's level of funding or reduces the level of contributions required of any Participating Company. Subparagraph 16.6(a)(2) shall not, however, preclude any advice or decision by the Plan's investment manager which results, or might result, in a diminution of assets of the Fund so long as such advice, if followed, or such decision constitutes a reasonably prudent investment decision in compliance with the fiduciary responsibility provisions of ERISA.

(b) Any Participant who is employed by a Participating Company on the effective date of a Change of Control and who is discharged other than on account of a Termination for Cause at any time during the three (3) year period beginning on the effective date of a Change of Control shall be entitled to following adjustments, if such adjustments result in a larger benefit than the benefit otherwise provided under Article IV of the Plan:

(1) Such Participant's eligibility for benefits and amount of benefits under the Plan shall be based on:

(A) The Eligible Service and Credited Service, respectively, that Participant had actually accrued on the date the Participant's discharge occurred; plus

(B) Three (3) additional years of Eligible Service and three (3) additional years of Credited Service, less any Eligible Service and Credited Service actually accrued from the effective date of a Change of Control to the date of Participant's discharge, except that total Credited Service used to compute benefits under the Plan for any Participant shall not exceed the maximum benefit accrual period of thirty (30) years (thirty-five (35) years for New Formula Participants); and

(2) Such Participant's Final Average Eligible Earnings for purposes of computing benefits under the Plan shall be the higher of:

(A) The Participant's actual Final Average Eligible Earnings on the date the Participant's discharge occurred; or

(B) The Participant's salary rate, stated in annual terms, on the effective date of the Change of Control, plus the most recent annual incentive bonus paid during the eighteen (18) month

period ending on the effective date of the Change of Control, plus any Eligible Earnings, other than salary and annual incentive bonus, paid to the Participant during the twelve (12) month period ending on the effective date of the Change of Control.

From and after December 31, 1993, the terms "Eligible Service" and "years of Eligible Service" in this paragraph 16.6(b) shall be replaced by "Vesting Service" and "Years of Vesting Service," respectively.

(c) If the Plan is terminated in whole after the end of the three (3) year period set forth in subparagraph 16.6(a)(1) and before the expiration of the five (5) year period beginning on the effective date of a Change of Control, any assets remaining in the Fund, after the allocation of assets required by Paragraph 16.2(c) of the Plan, shall be allocated according to the following categories before any reversion of remaining assets to any Participating Company shall be permitted:

(1) There shall be allocated an amount necessary to provide all former Participants and Beneficiaries whose Benefit Commencement Date occurred before the Plan termination date and who are still receiving benefits as of the Plan termination date a cost of living adjustment in their

benefits payable under Articles IV or VII of this Plan equal to ten percent (10%) of the amount of the benefits they were receiving on the Plan termination date. Such cost of living adjustment shall be effective as of the Plan termination date and shall continue in effect as long as benefits are payable to such Participants and Beneficiaries. In the event a Participant or Beneficiary described above in the first sentence of this subparagraph 16.6(c)(1) dies after the Plan termination date with a survivor entitled to benefits under the Plan, the computation of benefits payable to such survivor shall reflect the 10% cost of living adjustment to the benefit of such Participant or Beneficiary.

(2) There shall be allocated an amount necessary to provide an annual cost of living adjustment in any benefits payable under Articles IV and VII of this Plan after the Plan termination date as follows:

(A) The annual cost of living adjustment shall equal three percent (3%).

(B) Former Participants or Beneficiaries described in the first sentence of subparagraph 16.6(c)(1), Participants actively employed on the Plan termination date, and any of their survivors who are otherwise eligi-

ble for survivor benefits under the Plan, shall be eligible for the annual cost of living adjustment.

(C) Persons described above in subparagraph 16.6(c)(2)(B) shall first become eligible for an annual cost of living adjustment:

i. On the January 1 coincident with or following the Plan termination date, for a person whose Benefit Commencement Date occurred and who reached the Plan's Normal Retirement Age, prior to the Plan termination date; and

ii. Otherwise, on the next January 1, following the date on which both of the following conditions have been met:

a. the person's Benefit Commencement Date has occurred; and

b. the person has reached the Plan's Normal Retirement Age.

(D) The effective date of the annual cost of living adjustment each year shall be January 1, and annual cost of living adjustments shall be made to the benefits of eligible persons as

long as such benefits are payable to such persons.

(E) In the event a Participant or Beneficiary described above in subparagraph 16.6(c)(2)(B) dies after the Plan termination date with a survivor entitled to benefits under the Plan, the computation of benefits payable to such survivor shall reflect all annual 3% cost of living adjustments to the benefit of such Participant or Beneficiary.

(d) If, upon a Plan termination permitted under paragraph 16.6(c), assets in the Fund are insufficient to finance the purchase of annuities which provide the additional benefits set forth in such paragraph 16.6(c), the Participating Companies shall make any additional contributions to the Fund needed to increase assets in the Fund to the level required to finance the purchase of annuities which provide such additional benefits.

(e) Before a Change of Control, the Plan may be amended in any manner regardless of its effect on rights or benefits created by this section 16.6, and such rights or benefits shall not be treated in any manner as having accrued before the effective date of a Change of Control. For the five (5) year period beginning on the effective date of a Change of Control, however, no amendment to the Plan, other than as may be required by law, may be made which in any

manner would adversely affect the rights or benefits of any Participant or Beneficiary under this section 16.6. At the expiration of the five (5) year period beginning on the effective date of a Change of Control, the provisions of this section 16.6 shall be of no further force and effect.

16.7 Amendment of CHP Plan

The CHP Plan, as in existence prior to its merger with this Plan on January 1, 1991, is hereby amended, effective as of January 1, 1989, to incorporate the applicable provisions of this Plan required for the tax qualification of the CHP Plan up to January 1, 1991, including, without limitation, the $200,000 (as adjusted) limitation on compensation set forth in section 1.23, the Code Section 415 limitations on benefits set forth in Article V, the requirements concerning distributions set forth in section 6.6, the vesting provision set forth in paragraph 8.1(b), and the top-heavy provisions of Article XVIII.

Article XVII – Miscellaneous

17.1 Limitation of Rights; Employment Relationship

Neither the establishment of the Plan nor any modifications thereof, nor the payment of any benefits, shall be construed as modifying or affecting in any way the terms of employment of any Employee or as conferring any rights upon any Employee for continuation of employment, nor shall such actions interfere with the rights of CIGNA Corporation or any Related Company to discharge any Employee without regard to the ef-

fect which such action might have upon him as a Participant in the Plan, whenever the interests of CIGNA Corporation or any Related Company, in its sole judgment, may so require.

17.2 Reorganizations; Transfer of Assets

(a) If a Participating Company other than CIGNA Corporation merges or consolidates with or into a corporation, or ownership is transferred to a corporation or an unincorporated entity other than CIGNA Corporation or a Related Company, the Plan hereby created shall terminate with respect to the Employees of that Participating Company on the effective date of such merger, consolidation or transfer. If the surviving corporation resulting from such transfer, merger or consolidation, or the corporation to which the assets have been transferred, adopts this Plan, however, the Plan shall continue and the surviving corporation shall succeed to all rights, powers and duties of the Participating Company hereunder. The Plan Administrator shall direct that the portion of the Plan assets which pertains to employees of the surviving or successor corporation be transferred to the successor trustee or plan administrator, if applicable, appointed by that corporation. The employment of any Employee who is continued in the employ of a successor corporation shall not be deemed to have been terminated for any purpose hereunder.

(b) In no event shall this Plan be merged or consolidated with any other employee

benefit plan, nor shall there be any transfer of assets or liabilities from this Plan to any other such plans, unless immediately after such merger, consolidation or transfer, each Participant's benefits, if such other plan were then to terminate, are at least equal to or greater than the benefits which the Participant would have been entitled to had this Plan been terminated immediately before such merger, consolidation, or transfer.

17.3 Construction

The Plan and Trust shall each form a part of the other by reference and the terms shall be used therein interchangeably. To the extent possible all provisions of the Plan and the Trust forming a part thereof shall be construed, and all powers and duties granted by the Plan and the Trust shall be exercised, in a manner which will allow the Plan and the Trust to remain qualified under Code Sections 401(a) and 501, respectively. Headings of articles, sections and paragraphs of this document, to the extent they do not indicate a date a provision is effective or ceases to be effective, are for convenience of reference only, and as such they constitute no part of the Plan and are not to be considered in the meaning or construction of the Plan.

In construing the text of this Plan, the masculine shall include the feminine and the singular shall include the plural, and the plural the singular wherever the context shall plainly so require.

17.4 Non-Assignment

Plan benefits are provided for Participants or other payees for the their support and benefit, and the right of any Participant or Beneficiary to any benefit payment under the Plan shall not be subject to any voluntary or involuntary alienation or assignment, and shall be free from the claims of all creditors.

The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined by the Plan Administrator to be a Qualified Domestic Relations Order under Code Section 414(p). A domestic relations order entered before January 1, 1985, will be treated as a Qualified Domestic Relations Order if payment of benefits pursuant to the order has commenced as of such date, and may be treated as a Qualified Domestic Relations Order if payment of benefits has not commenced as of such date, even though the order does not satisfy the requirements of Code Section 414(p).

17.5 Governing Law

The Plan shall be governed and construed in accordance with ERISA and other applicable Federal law and, to the extent not governed by Federal Law, by the laws of the Commonwealth of Pennsylvania. Any reference herein to any section of the Federal Internal Revenue Code, ERISA or any other statute or law shall be deemed to include any successor statute.

17.6 Incapacitated Participant or Beneficiary

If the Plan Administrator deems any person to be incapable of receiving any benefit to which he

may be entitled by reason of minority, illness, infirmity, or other incapacity, the Plan Administrator may direct the trustee to make payment to such person's legally appointed guardian, or, if none has been appointed, to the holder of a legally valid power of attorney from such person. Such payments shall, to the extent thereof, discharge the liability of CIGNA Corporation, any Related Company, the Plan Administrator, the Named Fiduciary, any other fiduciary, the Trustee, and the Trust.

17.7 Non-Liability of the Employer

CIGNA Corporation and the Related Companies do not guarantee the Trust, Participants, former Participants, or Beneficiaries against loss of or depreciation in value of any right or benefit that any of them may acquire under the terms of this Plan. In addition, CIGNA Corporation and Related Companies do not guarantee any of the foregoing that the assets of this Plan will be sufficient to provide any or all of the benefits payable under this Plan at any time, including such time that the Plan may be terminated or partially terminated. All of the benefits payable hereunder shall be paid or provided for solely from the Trust or, as applicable, the Pension Benefit Guaranty Corporation and, CIGNA Corporation, the other Participating Companies and the other Related Companies in their role as employers do not assume any liability or responsibility whatsoever therefor.

17.8 Expenses

The reasonable expenses incident to the management and operation of the Plan, including the compensation of the Plan actuary, legal counsel,

advisors, investment managers, if any, and such other technical and clerical assistance as may be required, shall be payable out of the Trust; provided, however, that CIGNA Corporation, in its absolute discretion, may elect at any time to pay part or all thereof directly, and any such election shall not bind CIGNA Corporation as to its right to elect with respect to the same or other expenses at any other time to have such expenses paid from the Trust.

Article XVIII - Top-Heavy Provisions

18.1 Effect of Top-Heavy Status

If the Plan is or becomes a Top-Heavy Plan in any Plan Year beginning after December 31, 1983, the provisions of this Article XVIII shall supersede any conflicting provisions in the Plan.

18.2 Top-Heavy Definitions

The following definitions apply to the provisions of this Article XVIII:

(a) "Required Aggregation Group" means, with respect to any Plan Year:

(1) each defined benefit plan and each defined contribution plan of the Participating Companies or any Related Company in which a Key Employee participates in any Plan Year included in the Determination Period; and

(2) each other defined benefit plan and each other defined contribution plan of the Participating Companies or any Related Company which, during

the Determination Period, enables any defined benefit plan or defined contribution plan described in section 18.2(a)(1) to meet the requirements of Code Section 401(a)(4) or Section 410(b).

(b) "Permissive Aggregation Group" means, with respect to any Plan Year, the Required Aggregation Group plus any other defined benefit plan or defined contribution plan which the Participating Companies elect to include, provided such Permissive Aggregation Group meets the requirements of Code Section 401(a)(4) and Section 410(b) with such defined benefit plan or defined contribution plan being taken into account.

(c) "Determination Date" means, with respect to any Plan Year, the last day of the preceding Plan Year.

(d) "Determination Period" means the Plan Year containing the Determination Date and the four preceding Plan Years.

(e) "Key Employee" means any Employee or former Employee (and the beneficiaries of such Employee) who at any time during a Plan Year included in the Determination Period was:

(1) An officer of a Participating Company or a Related Company having annual compensation (as defined in Code Section 414(q)(7)) greater than 50% of the amount in effect under Code Section 415(b)(1)(A) for such Plan Year;

(2) One of the ten Employees having annual compensation (as defined in Code Section 414(q)(7)) from the Participating Companies and Related Company for a Plan Year greater than the amount in effect under Code Section 415(c)(1)(A) for such Plan Year and owning (or considered as owning within the meaning of Code Section 318) both more than a 1/2% interest and the largest interests in a Participating Company or any Related Company;

(3) A five-percent owner of a Participating Company or a Related Company; or

(4) A one-percent owner of a Participating Company or a Related Company having annual compensation (as defined in Code Section 414(q)(7)) from the Participating Companies and the Related Company for a Plan Year of more than $150,000.

For purposes of section 18.2(e)(1), no more than 50 Employees (or, if less, the greater of three or 10% of the Employees) shall be treated as officers. The determination of who is a Key Employee shall be made in accordance with Code Section 416(i) and regulations thereunder.

(f) "Non-Key Employee" means any Employee who is not a Key Employee.

(g) "Top-Heavy Plan" means, for any Plan Year beginning on or after January 1, 1984, this Plan, if:

(1) This Plan is not part of a Required or Permissive Aggregation Group, and the Top-Heavy Ratio for the Plan exceeds 60%; or

(2) This Plan is part of a Required Aggregation Group which is not part of a Permissive Aggregation Group, and the Top-Heavy Ratio for the Required Aggregation Group exceeds 60%; or

(3) This Plan is part of a Required Aggregation Group and of a Permissive Aggregation Group, and the Top-Heavy Ratio for the Permissive Aggregation Group exceeds 60%.

(h) "Top-Heavy Ratio" means a fraction. The numerator of the fraction is the sum of the present Equivalent Actuarial Values of accrued benefits of all Key Employees under all defined benefit plans in the Required or Permissive Aggregation Group of which this Plan is a part (hereinafter the "Aggregation Group"), plus the sum of the account balances of all Key Employees under all defined contribution plans in the Aggregation Group, as of the Determination Date or, in the case of a plan other than this Plan, the determination date under such other plan which falls within the same calendar year as the Determination Date. The denominator of the fraction is a similar sum determined for all Employees. For purposes of determining the fraction, the numerator and denominator shall include any part of any accrued benefit or account balance distributed in the Deter-

mination Period. With respect to Plan Years beginning after December 31, 1984, if any individual has not been credited with at least one Hour of Service with the Participating Companies or any Related Company at any time during the Determination Period, any cumulative benefit for such individual shall not be taken into account.

For purposes of the preceding paragraph, the present Equivalent Actuarial Values of accrued benefits and the sum of account balances shall be determined as of the most recent valuation date that falls within the twelve-month period ending on the Determination Date. The Actuarial Equivalent present values of accrued benefits shall be calculated using the Applicable Interest Rate and using the mortality assumptions set forth in section 1.29. The same actuarial assumptions shall be used in the case of all defined benefit plans which are being tested to determine the Top-Heavy Ratio of the Aggregation Group. The calculation of the Top-Heavy Ratio shall be made in accordance with Code Section 416 and the regulations thereunder.

Effective January 1, 1987, solely for the purpose of determining if the Plan, or any other plan included in a Required Aggregation Group of which this Plan is a part, is a Top-Heavy Plan, the accrued benefit of any Employee other than a Key Employee shall be determined under (i) the method, if any, that uniformly applies for accrual

purposes under all plans maintained by the Participating Companies and Related Company or (ii) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional accrual method of Code Section 411(b) (1) (C).

(i) Valuation Date. The valuation date for this Plan is December 31 of each Plan Year.

18.3 Minimum Accrued Benefit. For any Plan Year in which this Plan is a Top-Heavy Plan, each Participant who is a Non-Key Employee shall accrue the greater of the benefit provided under Article IV or the minimum annual benefit described in this section 18.3. Each Non-Key Employee who has 1,000 Hours of Service during a Plan Year shall receive this minimum accrual regardless of his level of compensation and regardless of whether he is employed on the last day of the Plan Year. The amount of such minimum annual benefit, expressed in the form of a single life annuity (with no ancillary benefits) payable at Normal Retirement Age, shall be equal to the product of (i) two percent of the Participant's average Limitation Compensation during his five highest-paid consecutive calendar years of employment (not including any year beginning after the last Plan Year in which the Plan is a Top-Heavy Plan), multiplied by (ii) each of his first ten Years of Credited Service in which the Plan is a Top-Heavy Plan for any Plan Year ending during such Year of Credited Service. A Participant whose accrued benefit is at least 20% of his average Limitation Compensation during such five highest-paid consecutive years shall not

accrue any additional benefit under this section 18.3.

18.4 Compensation Limitation. For any Plan Year before January 1, 1989, in which the Plan is a Top-Heavy Plan, only the first $200,000 (or such larger amount as may be prescribed by the Secretary of the Treasury) of a Participant's annual Eligible Earnings shall be taken into account for purposes of determining accrued benefits under the Plan.

18.5 Vesting. For any Plan Year beginning on or after January 1, 1989, in which this Plan is a Top-Heavy Plan, the following vesting schedule shall automatically apply in determining the vested percentage of the accrued benefit of each Participant who has an Hour of Service in such Plan Year:

Years of Vesting Service	Percent Vested
2	20%
3	40%
4	60%
5	100%

If the Plan becomes a Top-Heavy Plan and subsequently ceases to be such, the vesting schedule in this section 18.5 shall continue to apply in determining the vested percentage of any Participant who had at least three Years of Vesting Service as of December 31 of the last Plan Year in which the Plan was a Top-Heavy Plan. For other Participants, such schedule shall apply only to their accrued benefits as of such December 31.

18.6 Impact on Maximum Benefits. For any Plan Year in which this Plan is a Top-Heavy Plan, paragraphs 5.4(d) and (f) shall be read by substituting the number "1.0" for the number "1.25" wherever such number appears therein.

AMENDMENT NO. 1
TO THE
CIGNA PENSION PLAN

(As Amended and Restated Effective
January 1, 1989; and Further Amended Effective as
of July 26, 1989,
September 1, 1992 and December 31, 1993)

WHEREAS, CIGNA Corporation has retained the right to amend the CIGNA Pension Plan (the "Plan") pursuant to Article XVI, Section 16.1 thereof; and

WHEREAS, CIGNA Corporation desires to amend the Plan to modify the method for determining the lump sum present value of small benefits in accordance with the Uruguay Round Agreements Act and to require the lump sum distribution of small benefits of participants who terminated employment before September 1, 1992;

NOW, THEREFORE, effective as of January 1, 1995 (except where other effective dates are specifically provided), CIGNA Corporation hereby amends the Plan as follows:

1. Section 1.6 is amended to read as follows:

   1.6 "Adjustment Factor" shall mean the applicable cost of living adjustment factor prescribed by the Secretary of the Treasury for years beginning after December 31, 1994, in accordance with §415(d) of the Code, as amended by the Uruguay Round Agreements Act.

2. Section 1.8 is amended to read as follows:

1.8 "Applicable Interest Rate" shall mean, under Code §417(e)(3), the annual rate of interest on 30-year Treasury securities, as specified by the Commissioner of Internal Revenue, for the second calendar month preceding the beginning of the Plan Year which includes the Benefit Commencement Date. For purposes of Article V, this provision shall be effective January 1, 1995. With respect to all other provisions of the Plan, this provision shall apply only with respect to benefit distributions with Benefit Commencement Dates on and after October 1, 1995.

3. The Plan is amended to add a new 1.8A which reads as follows:

1.8A "Applicable Mortality Table" shall mean, under Code §417(e)(3), the table described in Rev. Rul. 95-6, or any successor table prescribed by the Commissioner of Internal Revenue in revenue rulings, notices or other published guidance. For purposes of Article V, this provision shall be effective January 1, 1995. With respect to all other provisions of the Plan, this provision shall apply only with respect to benefit distributions with Benefit Commencement Dates on and after October 1, 1995.

4. Subsections 5.2(b) and (c) are amended, and a new subsection 5.2(g) is added, to read as follows:

5.2 Statutory Maximum Retirement Benefit Limitations

* * *

(b) Adjustment for Early Retirement. If the retirement benefit of a Participant commences before the Participant's Social Security Retirement Age, the Defined Benefit Dollar Limitation shall be adjusted so that it is the actuarial equivalent of an annual benefit of $90,000 multiplied by the Adjustment Factor, beginning at the Social Security Retirement Age. The adjustment provided for in the preceding sentence shall be made in such manner as the Secretary of the Treasury may prescribe which is consistent with the reduction for old-age insurance benefits commencing before the Social Security Retirement Age under the Social Security Act, and with Code §415(b) (2) (C) and §415(b)(2)(E) as amended by the Uruguay Round Agreements Act.

(c) Adjustment for Deferred Retirement. If the retirement benefit of a Participant commences after the Participant's Social Security Retirement Age, the Defined Benefit Dollar Limitation shall be adjusted so that

it is the actuarial equivalent of an annual benefit of $90,000 multiplied by the Adjustment Factor, beginning at the Social Security Retirement Age, in accordance with Code §415(b) (2) (D) and §415(b) (2) (E) as amended by the Uruguay Round Agreements Act.

* * *

(g) Preservation of Accrued Benefits as of 12/31/94. The foregoing provisions of this Section 5.2 shall not cause a Participant's Accrued Benefit, as adjusted for his Benefit Commencement Date and optional form of payment, to be less than his protected accrued benefit as of December 31, 1994. Such protected accrued benefit is the Participant's Accrued Benefit under the terms of the Plan as of December 31, 1994, as adjusted for his Benefit Commencement Date and optional form of payment and taking into account the limitations of Code §415 applicable on such date. For purposes of determining a Participant's protected accrued benefit, any Plan amendments increasing benefits that are adopted after December 31, 1994, and any cost of living adjustments under Code §415(d) that become effec-

tive after such date, shall be disregarded.

5. Subsections 6.8(a) and (b) are amended, and a new subsection 6.8 (e) is added, to read as follows:

6.8 Small Benefits

(a) Effective September 1, 1992, if a Participant terminates employment with CIGNA Corporation and all Related Companies before qualifying for normal or early retirement benefits for any reason other than death, and if, as of the Benefit Commencement Date, the present Equivalent Actuarial Value of his entire vested accrued benefit does not exceed $3,500, the Plan Administrator shall cause such entire vested accrued benefit to be distributed to the Participant in a single lump sum form. Such distribution shall be made as soon as practicable following the Participant's termination of employment, but not later than the last day of the Plan Year following the Plan Year in which such termination occurs. A Participant who has no vested interest in his accrued benefit at the time of his separation from service shall be deemed to receive a cash-out in the amount of $0 under this subsection 6.8(a) as of the date of such separation from service.

(b) For purposes of subsection 6.8(a) the Participant's Benefit Commencement Date shall be the day following the

date of his termination of employment with CIGNA Corporation and all Related Companies.

For purposes of subsections 6.8(a) and (e), with respect to any lump sum distribution with a Benefit Commencement Date on or after October 1, 1995, the present Equivalent Actuarial Value of a Participant's vested accrued benefit shall be calculated using the Applicable Interest Rate and the Applicable Mortality Table.

* * *

(e) If a Participant terminated employment with CIGNA Corporation and all Related Companies for any reason other than death before September 1, 1992, and before qualifying for normal or early retirement benefits, if such Participant has not commenced receiving benefit payments prior to October 1, 1995, and if the present Equivalent Actuarial Value of his entire vested accrued benefit does not exceed $3,500 as of October 1, 1995, then October 1, 1995 shall be his Benefit Commencement Date, and the Plan Administrator shall cause such entire vested accrued benefit to be distributed to such Participant in a single lump sum distribution as soon as practicable after such Date.

If a Participant receives a lump sum distribution of his entire vested ac-

crued benefit under this subsection (e), and if he subsequently resumes participation in the Plan, his Credited Service with respect to the benefit distributed to him shall not be disregarded in any subsequent determination of his accrued benefit under the Plan, but such accrued benefit shall be offset by the accrued benefit attributable to the distribution.

IN WITNESS WHEREOF, CIGNA Corporation has caused this Amendment No. 1 to be executed by the undersigned officers on this 29th day of September, 1995.

(Corporate Seal)

ATTEST:	CIGNA CORPORATION
/s/ _____	/s/ _____
Carol Ward	Donald M. Levinson
Corporate Secretary	Executive Vice President

AMENDMENT NO. 2
To The
CIGNA PENSION PLAN
(As Amended and Restated Effective January 1, 1989)

WHEREAS, under Section 16.1 of the CIGNA Pension Plan (the "Plan"), CIGNA Corporation has retained the right to amend the Plan; and

WHEREAS, CIGNA Corporation desires to amend Section 11.2 of the Plan, concerning the crediting of interest on required employee contributions under certain Prior Plans, in order to comply with §411 © (2) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987;

NOW, THEREFORE, effective January 1, 1989, CIGNA Corporation amends Section 11.2 (a) (3) of the Plan as follows:

> (3) The rate of Credited Interest on Required Employee Contributions after January 1. 1976 and before January 1, 1988 shall be 5% per year compounded on each January 1; and the rate of Credited Interest on Required Employee Contributions on and after January 1, 1988 shall be the rate specified in §411(c) of the Code.

IN WITNESS WHEREOF, CIGNA Corporation has caused this Amendment No. 2 to be executed on Nov. 7, 1997 by its duly authorized officer.

[Corporate Seal]

ATTEST: CIGNA CORPORATION

/s/ _____	By:/s/ _____
Carol Ward	Wilson H. Taylor
Corporate Secretary	Chairman and Chief Executive Officer

AMENDMENT NO. 3
To The
CIGNA PENSION PLAN
(As Amended and Restated January 1, 1989)

WHEREAS, under Section 16.1 of the CIGNA Pension Plan (the "Plan"), CIGNA Corporation has retained the right to amend the Plan;

WHEREAS, CIGNA Corporation desires to amend the Plan to provide for full vesting of accrued benefits for employees affected by certain business transactions; to provide special transition benefits for employees transferring to Reinsurance Solutions International, L.L.C. on January 1, 1996; to provide for continued participation in the Plan of certain Participants who transfer to positions in the CIGNA Financial Advisors, Inc. field organization; and to make certain administrative changes;

NOW, THEREFORE, effective January 1, 1996, unless otherwise specified, CIGNA Corporation amends the Plan as follows:

1. Section 1.23 of Article I is amended by adding to the end a new paragraph (c), to read as follows:

> (c) Eligible Earnings shall also mean, for those Participants described in subparagraph 8.1(d)(7), compensation elements described in paragraph 8.1(a) paid by RSI, from January 1, 1996 to the earlier of (1) a Participant's termination of employment with RSI or (2) December 31, 2005.

2. Section 1.24 of Article I is amended by adding to the end a new paragraph, to read as follows:

Effective January 1, 1996, Eligible Employee shall also mean an Employee who meets the following conditions:

(A) was credited with his first hour of Credited Service before January 1, 1989;

(B) has not thereafter had any Eligible Service disregarded under paragraph 3.2(e) or any Vesting Service disregarded under paragraph 3.10(a)(2);

(C) after December 31, 1995, transfers to a position in the CIGNA Financial Advisors, Inc. field organization (or successor operation) in which position (but for this paragraph) he would be eligible to participate in the Connecticut General Life Field Retirement Plan (the "Field Plan") (or a related nonqualified defined contribution plan for those whose earnings exceed certain levels set forth in the Field Plan), or any successor plan;

(D) is an Eligible Employee actively participating in this Plan continuously from December 31, 1995 to the date of the transfer described in subparagraph (C) above; and

(E) the position described in subparagraph (C) above is a position in which an incumbent on December 31, 1988 would have been an Eligible Employee under this Plan.

However, Eligible Employee status in the Plan under this provision is limited to items of compensation de-

scribed in Section 1.13(a)(1) of the Field Plan and excludes items of compensation described in Section 1.13(a)(2) and (3) of the Field Plan

3. Section 1.31 of Article I is amended by adding to the end a new final paragraph, to read as follows:

> Years and months of Vesting Service with RSI pursuant to paragraph 3.10(e) shall, solely for purposes of computing Final Average Eligible Earnings under paragraphs 1.31(a) and (b) above for Participants described in sub-paragraph 8.1(d)(7), be deemed to be years and months of Credited Service with INA.

4. Article I is amended by adding to the end new Sections 1.78 and 1.79, to read as follows:

1.79 "INA" shall mean the Insurance Company of North America, or any successor.

1.78 "RSI" shall mean Reinsurance Solutions International, L.L.C., or any subsidiary or successor.

5. Article II is amended by adding to the end a new Section 2.5, to read as follows:

2.5 Limited Participation by RSI Employees

An RSI employee described in sub-paragraph 8.1(d)(7) will, solely for the purposes described below, continue to be a Plan Participant while he remains employed by RSI, as if he continued to be employed by INA:

(a) Certain compensation with RSI, as described in paragraph 1.23(c), will

be deemed to be Eligible Earnings from INA under the Plan;

(b) As described in Section 1.31, such deemed Eligible Earnings will be considered in computing the Participant's Final Average Eligible Earnings under the Plan; and

(c) As described in paragraph 3.10(e), certain Hours of Service with RSI will be treated as Hours of Service with the INA under the Plan for purposes of calculating the Participant's Years of Vesting Service to determine Participant's rights to early retirement benefits under section 4.3 or termination benefits under section 4.4.

Notwithstanding the limited recognition of RSI compensation and service under the Plan RSI is not, and shall not be deemed to be, a Participating Company.

6. Section 3.10 of Article III is amended by adding to the end the following new paragraph (e), to read as follows:

(e) Effective January 1, 1996, an RSI employee described in sub-paragraph 8.1(d)(7) will, so long as he remains employed by RSI, continue to receive credit for Hours of Service with RSI as if he remained employed by INA, but only for purposes of determining his Years of Vesting Service and his right to early retirement benefits under section 4.3 or termination benefits under section 4.4.

7. Effective January 1, 1996, section 4.8(a) shall no longer apply to any person who ceases to be an Eligible Employee under this Plan on or after January 1, 1996, and subsequently becomes a participant in the Ross-Loos HealthPlan of California Union Employees Pension Plan as continued by Caremark International, Inc. or an affiliate (the "Ross-Loos Plan").

8. Effective January 1, 1996, section 4.8(b) shall no longer apply to any person who ceases to be a participant in the Ross-Loos Plan after January 1, 1996 and subsequently becomes an Eligible Employee under this Plan.

9. Section 8.1(d) of Article VIII is amended by adding to the end the following new subparagraphs:

(6) As of January 1, 1996, and with respect to accrued benefits as of December 31, 1995, for any Participant who was an active employee of CIGNA HealthCare of California, Inc. or an affiliate on December 31, 1995, and who became an employee of Caremark International, Inc. or an affiliate on January 1, 1996 pursuant to the Asset Purchase Agreement between CIGNA HealthCare of California, Inc. and Caremark Physician Services, Inc.

(7) As of January 1, 1996, and with respect to accrued benefits as of December 31, 1995, for any Participant who was an active employee of INA or an affiliate on December 31, 1995, and who became an RSI employee on January 1, 1996.

10. Effective January 1, 1996, all participants in the Ross-Loos Plan not described in subparagraph

8.1(d)(6) of the Plan (the "Non-Continuing Ross-Loos Participants"), shall no longer participate in the Ross-Loos Plan, but shall be transferred to this Plan. As soon as practicable after January 1, 1996, but not sooner than the expiration of any waiting period required after the filing of any applicable notice with the Internal Revenue Service, all Ross-Loos Plan liabilities related to the Non-Continuing Ross-Loos Participants, and any Ross-Loos Plan assets related to such liabilities, shall be transferred to this Plan, but such transfer shall be deemed to have occurred as of January 1, 1996. The Plan Administrator and Plan Actuary shall determine an appropriate amount of interest to transfer from the Ross-Loos Plan to this Plan with respect to the transferred assets for the period from January 1, 1996 to the actual date of the transfer, and the asset transfer shall otherwise comply with the applicable requirements of Internal Revenue Code Section 414(l).

CIGNA Corporation causes this Amendment No. 3 to the CIGNA Pension Plan to be executed on December 18, 1996, by its duly authorized officer.

ATTEST: CIGNA CORPORATION

/s/ _____ By: /s/ _____

Carol J. Ward
Corporate Secretary

Wilson H. Taylor
President and Chief
Executive Officer

AMENDMENT NO. 4
To The
CIGNA PENSION PLAN
(As Amended and Restated January 1, 1989)

WHEREAS, under Section 16.1 of the CIGNA Pension Plan (the "Plan-1. CIGN.A. Corporation has retained the right to amend the Plan;

WHEREAS, CIGNA Corporation desires to amend the Plan to provide for a cessation of benefit accruals for those employees described below and for the exclusion from further participation in the Plan as of April 1, 1997 of MCC Direct Service Clinicians:

NOW, THEREFORE, effective as of the dates indicated below CIGNA Corporation amends the Plan as follows:

1. Notwithstanding any other provision of the Plan, no Employee who, as of December 31, 1997, is a New Formula Participant or has a combined total of Years of Credited Service and age less than forty-five (45) shall accrue any additional benefits under the Plan after December 31, 1997. No Employee who would otherwise be eligible to be a New Formula Participant after December 31, 1997, shall become an Eligible Employee or accrue any benefits under the Plan. The foregoing cessation and/or suspension in benefit accruals and exclusion from eligibility to participate in the Plan after December 31, 1997, shall remain in effect until the adoption of a subsequent amendment to the Plan, and such subsequent amendment may provide for benefit accruals under terms and conditions different from the Plan provisions in effect before 1998. No such subsequent amendment shall result in the accrued benefit of any Participant being less than such Participant's ac-

crued benefit under the plan as of December 31, 1997.

2. Section 1.24 of Article I is amended effective March 31, 1997 by adding the following new paragraph (f):

(f) Effective April 1, 1997, no Employee who is classified as an MCC Direct Service Clinician shall be an Eligible Employee. No Employee who is classified as an MCC Direct Service Clinician as of March 31, 1997 shall accrue any additional benefits under the Plan after that date. Nothing contained in this paragraph shall result in the accrued benefit of any MCC Direct Service Clinician being less than such Participant's accrued benefit under the plan as of March 31, 1997.

3. Section 1.24 of Article I is amended effective December 31, 1997 by adding the following new paragraph (g):

(g) Effective January 1, 1998, an Employee who at any time during 1997 was employed by Healthsource, Inc. or a company that was one of its subsidiaries before July 31, 1997, shall not be an Eligible Employee.

CIGNA Corporation causes this Amendment No. 4 to the CIGNA Pension Plan to be executed on October 5th, 1997. by its duly authorized officer.

ATTEST: CIGNA CORPORATION

/s/ _____ By:/s/ _____

Supreme Court, U.S.
FILED
AUG 27 2010
OFFICE OF THE CLERK

No. 09-804

IN THE
Supreme Court of the United States

CIGNA CORPORATION AND CIGNA PENSION PLAN,
Petitioners,

v.

JANICE C. AMARA ET AL., individually and on behalf of all others similarly situated,
Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

JOINT APPENDIX
Volume 3 of 3
(Pages 749a-1002a)

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PETITION FOR WRIT OF CERTIORARI FILED JANUARY 4, 2010
CERTIORARI GRANTED JUNE 28, 2010

TABLE OF CONTENTS

Page

Docket Entries from the United States Court of Appeals for the Second Circuit, No. 08-3388-cv 1a

Docket Entries from the United States District Court for the District of Connecticut, No. 3:01-cv-02361-MRK 14a

Memorandum of Decision Granting Motion To Certify Putative Class (Dec. 20, 2002) 96a

Third Amended Class Action Complaint for Declaratory and Injunctive Relief Under ERISA (Feb. 17, 2006) 105a

Answer and Affirmative Defenses of Defendants CIGNA Corporation and CIGNA Pension Plan to Third Amended Class Action Complaint (Mar. 6, 2006) 123a

Stipulation and Joint Motion on Conduct of Discovery and Trial on "Likely Prejudice" and "Harmless Error" Issues Connected with Second and Fourth Claims for Relief (Mar. 10, 2006) 138a

Trial Transcript Excerpts

- Testimony of Janice C. Amara (Sept. 11, 2006) 147a
- Testimony of Gisela Broderick (Sept. 11, 2006) 159a
- Testimony of Annette Glanz (Sept. 11, 2006) 182a

Testimony of Claude Poulin (Sept. 11, 2006) 189a

Testimony of James Stratman (Sept. 13, 2006) 196a

Testimony of Robert John Upton (Sept. 14, 2006) 201a

Testimony of Barbara Hogan (Sept. 14, 2006) 212a

Testimony of Bruce A. Charette (Sept. 14, 2006) 227a

Testimony of Patricia Flannery (Sept. 15. 2006) 240a

Testimony of Lawrence Sher (Sept. 15, 2006) 255a

Testimony of Claude Poulin (Jan. 25, 2007) 264a

Order Under Rule 23(c)(1)(B) (Mar. 12, 2007) 270a

Defendant's Responses and Objections to Plaintiffs' Proposed Post-Trial Findings of Fact (June 25, 2007) 283a

District Court Oral Argument Transcript (April 30, 2008) 302a

Brief of Defendants-Appellees / Cross-Appellants in Response to Plaintiffs-Appellants' Brief and in Support of Their Cross-Appeal (Jan. 13, 2009) 316a

Court of Appeals Oral Argument Transcript (May 21, 2009) 377a

Trial Exhibits

Exhibit 1 ..... 396a
Exhibit 2 ..... 539a
Exhibit 47 ..... 749a
Exhibit 48 ..... 752a
Exhibit 58 ..... 755a
Exhibit 115 ..... 771a
Exhibit 117 ..... 811a
Exhibit 119 ..... 834a
Exhibit 120 ..... 835a
Exhibit 121 ..... 837a
Exhibit 124 ..... 838a
Exhibit 128 ..... 844a
Exhibit 129 ..... 856a
Exhibit 130 ..... 874a
Exhibit 131 ..... 890a
Exhibit 133 ..... 893a
Exhibit 140 ..... 897a
Exhibit 505 ..... 902a
Exhibit 506 ..... 923a
Exhibit 508 ..... 939a
Exhibit 516 ..... 990a
Exhibit 598 ..... 996a

The following opinions and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the petition for a writ of certiorari:

Opinion of the United States Court of Appeals for the Second Circuit 1a

Opinion of the United States District Court for the District of Connecticut (Feb. 15, 2008) 5a

Opinion of the United States District Court for the District of Connecticut (June 13, 2008) 160a

Stephen Bruce

From: Meyn, Gerald T TL17M
Sent: Tuesday, September 21, 1999 11:16 AM
To: Steele, Robert W H20A
Subject: Cash Balance

Bob: I appreciate your having appropriate people look at this. Regards, Jerry

cash balance facts for board m...

Cash Balance Pension Plans
Background for September 1999 Board Meeting

CIGNA's View on Cash Balance Plans

- A pension plan with obvious value is required as part of a competitive compensation package.
- Important for attraction of new employees who tend to be younger and more mobile than earlier generations.
- The elimination of incentives for early retirement helps retain capable staff.
- Provides an opportunity to redirect funding to compensation vehicles which pay for performance. CIGNA instituted a variable match for its 401(k) which is based on successful company performance.
- CIGNA's Cash Balance plan has been very well received by CIGNA employees (employee survey ratings up 15 percentage points) and has not generated notable controversy.

Basic Facts About the CIGNA Pension Plan

CIGNA Pension Plan –as of 1/1/1999

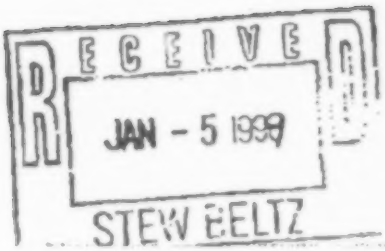
Pension Plan	No. of Participants	Avg. Age	Avg. Service	Pension Liability
Retired Employees	12,200	n/a	n/a	$1,110M
Terminated, Vested Employees	22,500	n/a	n/a	$435M
'Old' Plan (Tier 1)	7,200	47	18.8	$1,050M
'New' Plan (Cash Balance)	31,300	37	5.3	$210M
Total	73,200	n/a	n/a	$2,805M

CIGNA Cash Balance Plan

	Benefit Credit (Percentage of Earnings)	
Points (Age plus Credited Service)	For pay up to the Integration Level*	For pay above the Integration Level*
Less than 35	3.0%	4.5%
35 to 44	4.0%	5.5%
45 to 54	5.0%	6.5%
55 to 64	6.0%	7.5%
More than 64	7.0%	8.5%
* The Integration Level will be approximately equal to ½ of the Social Security Taxable Wage Base ($34,000 for 1998).		

Cash Balance Plan Controversies

Cash Balance Plan Problems	CIGNA's Actions
• Older, long-service employees are disadvantaged, especially for early retirement.	• All long service CIGNA employees are grandfathered to continue in the final pay, traditional pension plan with its enhanced early retirement values. • Shorter service employees are not disadvantaged because their previous traditional pension plan had only minimal early retirement subsidies.
• Opening cash balances are established below actual value, resulting in multiple years without additions to an individual's pension accrual.	• Market rates were used to establish all opening balances, and an enhanced (lower) discount rate was used to calculate opening balances for all employees with age plus service equal to 55 or higher. No employee will experience any period without standard additions to his pension account.
• A moratorium has been declared by the IRS on the approval of cash balance plans.	• The IRS now requires its district offices to seek technical advice on any cash balance plan reviewed. • The IRS commissioner is expected to testify before Congress today (9/21) that it will temporarily halt approval of cash balance plans while it confirms that the plans do not violate ADEA or other EEOC regulations. The IRS is expected to resume issuance of qualifying letters for cash balance plans later this year.
• Cash Balance Plans violate ADEA	• This is a new challenge, related in part to opening balances established below actual value (see above), but also is a challenge to a flatter the schedule of accruals. This contention has not been proven in any challenge to date. CIGNA's age-progressive accrual schedule reduces, but does not eliminate vulnerability to this argument.
• Comparative disclosure of old-plan versus new-plan.	• One congressional initiative would require plan sponsors to provide comparative estimates for a large number of future ages and retirement dates. As presently stated, it would apply to plans established after 1998, so would not apply to CIGNA. Plan sponsors are strongly resisting because of the administrative burden and expense, and because of the irrelevance of the information.



1/1/1999

→ John Arko - FYI.

To: DML
Fm: GTM
Re: WSJ Article

The attached is a further expose attempt by the writer of the earlier WSJ cash balance article.

- Her most damaging assertion is that some employers are deliberately establishing opening balances below the "real" value of each employee's pension. Of course, we didn't do that, and would have disclosed it if we had. So, there's no exposure for us on that point.

- The writer notes that most companies have had portable pensions for a long time because of allowed cash-out of values below $5,000. She neglect to say that the values are so low because of the very small pension values earned by young people under traditional pension plans.

- Shultz says that changing interest rates could result in lost value to employees. She suggests that employees should be saying, "If my opening balance had been calculated now with lower interest rates, it would be higher than what the company gave me a year ago." If you remember, employees in Tier 2 whose age + service were 55 or higher got a boost in their opening balances because we calculated them with a discount rate which was 1% lower than the market rate we used for everyone else. This not only helped ensure that these employees get a reasonable pension from their service at CIGNA, but also protects against what-if speculation about the effect of falling interest rates.

Too bad this writer is hung up on this topic. We got only one inquiry about the previous article. I'll let you know if we get any expressions of concern this time. We have our previous response ready in any case.

Let me know if you have any questions.

Regards,

cc: GTM Direct Reports – S. Beltz
dml wsj cash balance 1_04.doc

Some Pension Funds Look Like 401(k)'s, But They Sure Don't Behave Like Them

FUND TRACK

By Ellen E. Schultz
Staff Reporter of The Wall Street Journal

Is your old-fashioned pension turning into some kind of fancy new 401(k)?

Your employer might want you to think so. Cashing in on the popularity of 401(k) plans, companies across America are replacing traditional pensions with 401(k) look-a-likes. The most common – a "cash balance" plan – doesn't even use the word pension in its moniker.

On the surface, the new pension plans do, in fact, look like 401(k)'s: Employees get hypothetical "accounts" into which contributions are made each year. The accounts earn interest, and employees can take the money with them when they leave.

But the cash-balance plans are still really pensions, despite some of the sexy attributes of a 401(k). Unlike 401(k)s, employees don't make investment decisions, and they are likely to get lower returns. They usually can't make withdrawals, or take out loans. More important, because cash-balance-type plans are really pensions – not savings plans, like 401(k)s – what you see isn't necessarily what you get. The "account" may show a "balance" that is, in fact, lower than what a departing employee would take with him in a lump sum.

From an employer's perspective, however, cash-balance plans can be the best of both worlds. As with traditional pension plans, an employer can keep investment earnings above those actually promised to pay for retirement benefits. Yet the plans are far less costly to fund than traditional pensions, because future benefits for older workers are reduced. Fiberglass concern Owens Corning saved $20 million when it switched to a cash-balance plan in 1996, and Commonwealth Industries Inc., a building-supply company, saved $11 million last year after making the switch.

To better understand the difference between cash-balance plans and 401(k)'s, remember that employees enrolled in 401(k) plans have separate, individual investment accounts to which they – and sometimes their employer – contribute a percentage of pay. But in a cash-balance account, there is no real cash balance or account. The "account" is really a bookkeeping device. For what? A pool of pension assets.

How does this work? Well, under a traditional pension plan, the pool of assets is in a trust, and when you quit or retire, a formula is applied to the pool to determine your share. A common formula involves multiplying your years of service times the average of your pay in your final years times some designated multiplier.

Now, under a cash-balance plan, the pool of pension assets is still there, but the formula determining your share changes. It no longer is based on "final average pay." Instead, the formula assumes that each year a percentage of your pay was contributed to an account, and that this money got an interest credit of 5% or so. While there is no actual account, you receive a quarterly statement showing your "balance."

For newly hired workers and younger employees, such quarterly statements show what their pension balance would be worth, assuming they stick around for five years and vest. But for longer-service employees with years of accrued pension benefits, the account-balance format can mask the value of their previously accrued pension benefit. The starting account balance may be lower than the value of the old benefit, which means they might be working for a number of years before they begin to earn benefits they already had under the former pension plan. On the other hand, if they quit or retire, such workers might be entitled to a greater amount than what appears on the account-balance statement.

Some additional things to understand about 401(k)'s vs. cash-balance accounts:

Investment returns. In a 401(k) plan, employees usually choose how their money is invested, and keep 100% of the returns (or suffer any losses). In a cash-balance pension, the employer invests the assets, and promises to provide an interest credit of 5% or so to employee accounts. The employer keeps whatever it earns above that amount.

What's more, the "interest" doesn't necessarily cost employers 5%, since a portion of it might be paid in lieu of compensation increases. For example, an

Please Turn to Page C19, Column 1

Say, What?

How employers describe cash-balance plans to employees:
"It's a lot like a 401(k)..."

How pension experts describe cash-balance plans:
"A cash-balance plan is a defined-benefit plan where the benefit is expressed as an account that earns a set rate of interest. The accrued benefit is basically your lump sum accumulated to age 65 at the interest rate in the plan ... and then divided at age 65 by an immediate annuity factor ... The cash-balance plan is a career average plan..."

BEST AVAILABLE COPY

With Pensions, Looks Can Be Confusing

FUND

TRACK

Continued From Page C1

employer that has 5% annual pay increases can instead reduce pay increases to 3%, and direct the other 2% into the cash-balance plan. In this example, by shifting compensation increases to the pension pool, the employer enjoys savings on the FICA, or Social Security, taxes it would have paid on that money, and increases the assets in the pension pool, on which an investment spread hopefully is earned.

Portability and vesting. Money in a 401(k) account is generally portable. Employees can always take 100% of their contributions when they leave; employer contributions are subject to vesting rules.

In traditional pensions, in contrast, employees must generally wait until age 65, and they then receive their benefit as a monthly check. Fewer than half of pension plans allow departing employees to take the value of their pension in a lump sum. However, most lower-income and shorter-term workers have pension portability, since many employers automatically cash out departing employees when the value of their pensions would be a lump sum of $5,000 or less.

Most cash-balance pensions allow workers to take their pensions in lump sums when they leave, provided they are vested, which usually takes five years. Lump sums are popular with employees, especially younger and lower-income workers who use the money to pay bills, and with older workers, who feel they can invest the money and get a higher return than what they would receive in a traditional pension payment.

But because cash-balance plans are pensions, not 401(k)s, employers can use the lump-sum feature as a tool in workforce reductions. Employers can coordinate the adoption of a cash-balance plan with layoffs or early-retirement windows by providing financial incentives to speed up departures (paid for by cost savings achieved by the switch to the new plan, as well as from using any overfunding in the old plan), and allowing workers to take their money in a lump sum (which is possible under the cash-balance format).

754Aa

Cash-Balance Plans' Key: Interest Rates

By Ellen E. Schultz
Staff Reporter of The Wall Street Journal

If your employer converts a traditional pension plan into a new cash-balance one, you might want to know a few things about interest rates.

Yes, interest rates. Contrary to what many employees are told, their benefits under a cash-balance program are affected—in some cases sharply—by interest-rate changes. This isn't true for newly hired employees starting out with a zero account balance. But if your plan converted recently, or is converting Jan. 1, and you have already accrued a significant pension, then interest-rate fluctuations in the next few years could mean the difference of tens of thousands of dollars.

Here's why: When most plans convert, the value of the pension you earned up to the time of the conversion is "frozen." This frozen accrued benefit (i.e., "old pension benefit") doesn't grow, but its present value changes with interest rates. If interest rates fall, the lump sum is worth more; if rates rise, the lump sum is worth less.

If you leave your job, you can never receive less than the value of the old pension—whatever it is valued at at the time you leave. This happens with regular pensions, too, when they are paid out in a lump sum. A 1% change in interest rates can make a 15% difference in the lump sum's size.

But once a pension plan converts to an account-balance structure, the employer must give you the greater of your old benefit's value, or the amount in the account.

If interest rates rise, which is likely given current unusually low rates, the present lump-sum value of your old pension will fall. Assume that your old pension was worth $50,000 at the time of the conversion, and its value falls to $40,000. Also assume that your opening-account balance was $50,000, and you received $5,000 in pay-and-interest credits, bringing the total to $56,000. If you quit or retire, you receive $55,000—the greater of the account balance and the old benefit.

You can see how the employer in this example has lost the opportunity to benefit—via reduced lump-sum values—from rising rates. To counter this, many employers establish opening balances at neither the value of the old benefit at the time of conversion. Take the above example with a pension valued at $50,000 at the time of conversion. Now, let's say your employer sets the opening balance at $35,000, and you subsequently receive $5,000 in pay-and-interest credits. If interest rates have risen, your employer would pay you only $40,000.

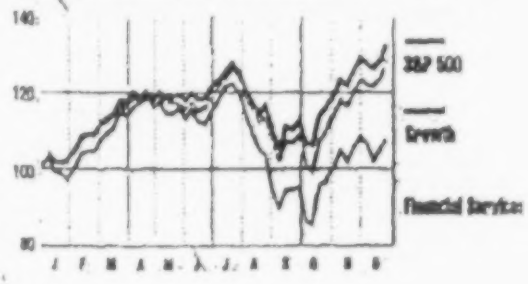
If interest rates fall, which has been the case in recent years, the value of the old pension rises. Assume your old pension was worth $50,000, and falling rates increased its present value to $60,000. Also assume your opening balance was $50,000, and your account grew to $56,000. If you leave, you get $60,000—the greater of the two.

However, in essence, you wouldn't have been earning new pension benefits in the prior year or so before you left, even though the balance "grew" to $55,000 from $50,000. Meanwhile, if you stay on the job, falling rates simply increase the gap between the value of the old pension and the cash-balance account, which means you won't be earning a new benefit until your account grows to the level of your old pension. If your opening balance was $35,000, your account will have to grow to $60,000 from $35,000, in this example, before you truly begin to accrue new benefits.

FUND PERFORMANCE DERBY

Financial Services Funds

Lipper Mutual Fund Indexes; weekly data, reindexed to 100 on Dec. 31, 1997



How the Biggest Funds in the Category Performed

Fund Name	Total Assets ($ Billions) 12/23/98	Total Returns: 4 Weeks 12/25/98	Year-to-Date 12/31/97 12/23/98	One Year 12/26/97 12/25/98	5 Years 12/29/93 12/29/98
J Hancock Reg Bnk; B	$4.78	+1.36%	− 0.52%	+ 1.14%	+107.55%
J Hancock Fnl Indstr; B	2.75	+2.16	+ 3.56	+ 5.49	—
Fidelity Sel Insurance	2.46	+2.77	+17.17	+19.34	+179.30
Invesco Strat Financial	1.53	+4.22	+12.91	+15.12	+178.72
Fidelity Sel Regl Bnks	1.18	+4.28	+11.20	+13.27	+221.20
Fidelity Sel Home Fin	1.11	−2.58	−17.47	−15.86	+160.30
SIFE Trust Fund; A-I	0.98	+4.14	+ 4.58	+ 6.26	+183.91
Fidelity Sel Brokerage	0.84	+2.18	+ 6.35	+ 9.11	+148.85
Fidelity Sel Financial	0.81	+3.75	+14.27	+16.23	+204.81
Pilgrim Bk&Thrift; A	0.50	−1.16	− 4.22	− 2.37	+213.54
Lipper Financial Svcs. Fd Indx	—	+2.93	+ 4.97	+ 7.00	+179.04
S&P 500 (dvn. reinvested)	—	+5.78	+29.89	+32.99	+194.32

Source: Lipper

Gerald T. Meyn
Vice President
Employee Benefits &
Health Management Department

CIGNA
Telephone 215.761.2729
Facsimile 215.761.5524
Gerald.Meyn@CIGNA.com

11/2

CIGNA

To: DMcK

Dennis,

Does disruption comment demand follow up questions: how, how much, why?

Regards,

Jerry

Retirement Plan Changes *Confidential*
Possible Media Questions
(to be used only in the event of media inquiries)

I understand that CIGNA is changing its pension plan. Is that true? What's happening?

CIGNA's retirement program for employees consists of a defined benefit plan and a defined contribution plan. CIGNA will continue to provide both of those plans to employees. What is changing is the type of defined benefit plan we provide for most employees. The defined benefit plan is NOT going away; we're changing from a traditional defined benefit pension plan to a cash balance defined benefit plan.

In addition, for all employees that participate in our 401(k) plan, CIGNA will offer a variable match that is **in addition** to the company's current 50% match. The variable match will depend on company performance and could be as high as 33 1/3 % of the matchable portion of an employee's savings in the 401(k).

An article in the 10/30/97 Wall Street Journal said that only one quarter of workers under age 65 are earning a traditional pension, as companies adopt 401(k) plans that shift the investment responsibility to workers. Keep in mind that CIGNA is providing employees with a pension plan **and** offers them a 401(k).

You said the retirement program is changing for some employees. What do you mean by "some"?

Employees hired before December 31, 1988 will not move to a cash balance plan. They will keep the traditional defined benefit plan. About 8,400 employees will be grandfathered. Many of these employees -- who on average have 20 years of service with CIGNA -- have earned substantial benefits under the current pension plan. Also, most of these employees are entering the career stage in which the traditional pension plan provides the highest growth in benefits. And, these employees have based their financial and retirement planning on the assumption that they will continue to earn benefits under the current CIGNA pension plan. Changing their retirement plan now could disrupt their financial plans, possibly leaving them without enough time before retirement to recover from this disruption. So, we are grandfathering these people, most of whom will retire under the traditional pension plan.

Other CIGNA employees and new hires will be able to earn comparable benefits as career employees under the cash balance plan.

What about an employee hired after December 31, 1988 who is age 55 or older?

For these employees who are closer to retirement, CIGNA will boost the opening account balances to compensate for the fewer years they have available to them to accumulate

benefits under the account balance plan.

How will an employee make the transition from the traditional pension plan to the cash balance plan?

All benefits that an employee has earned under the current traditional pension plan will be converted to an opening account balance in the cash balance plan. An employee's opening balance will equal the lump sum value of his/her pension benefits as of December 31, 1997. This amount will be calculated during the spring of 1998, once we have all the year-end payroll date for 1997, and it will be added to an employee's new plan account retroactively, effective January 1, 1998.

How are you determining the lump sum conversion?

The conversion factors we are using to determine an employee's opening account balance are based on guidelines established by the government to ensure a fair transition for employees.

Why change to an cash balance plan?

Many other companies are offering account balance plans and many others are headed in that direction. We want to improve the competitiveness of our benefits program and our ability to attract and retain top talent.

In addition, we want to meet the changing needs of a more mobile workforce. Cash balance plans provide more portable retirement benefits. If an employee were to leave the company before retirement, he or she (if vested) could take their account balance with him/her and invest it elsewhere so that the benefit could continue to grow.

We also want to provide retirement benefits in a form that people can understand. Cash balance plans are usually easier to understand that traditional pension plans. By having a plan that's easier to understand, employees can better plan for their retirement.

CIGNA's retirement program is a partnership between the company and the employee. CIGNA provides a secure, basic benefit through its defined benefit pension plan. The employee has an opportunity to increase retirement benefits by saving in our 401(k).

Are people losing some of their potential pension payouts under the account balance plan or are they gaining?

Cash balance pension plans are different from traditional pension plans, so exact comparisons of benefits that cover all possible outcomes are difficult. The annuity will depend on a broad range of variables, such as future salary, interest rates and Social Security. Generally speaking, cash balance plans tend to provide larger benefits for shorter-service employees and comparable benefits for longer-service employees.

Again, our goal in providing retirement benefits to employees is to make retirement planning a partnership between the company and the employee and to provide benefits that help our employees meet their retirement income goals. As I mentioned before, the pension plan, whether it be the traditional pension plan or the cash balance plan, provides a secure, company-funded retirement benefit. We also offer a 401(k) plan, which allows the employees to contribute their own money for retirement and make their own investment decisions. CIGNA provides a match (50% up to 6%, plus a variable match up to 33 1/3% of the matchable 6%).

Is CIGNA saving money by making this change?

No. CIGNA is not saving money by making this change. We expect the total cost for retirement benefits to remain about the same in some years and increase in others. The new variable 401(k) match will help us share our success with our employees and give us the flexibility to increase retirement benefits when company performance is good.

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(22%)

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Deloitte and Touche Article

WSJ, 9/23/97, page B1

FAST FACTS

- D&T moved from a very rich defined benefit plan (details on record) to a cash balance plan (no details available).

- The new D&T cash balance plan included long service employees, grandfathering only partners and employees aged 50 and over with 15 years (about 5% of the workforce).

- The D&T defined benefit plan had sizeable early retirement subsidies, yielding extremely unfavorable comparisons with the cash balance plan at age 55.

- Almost all CIGNA Tier 1 (2%) plan participants are grandfathered and will eventually retire under the provisions of that plan, including its early retirement subsidies.

- The CIGNA Tier 2 (1.67%) plan is about 50% of the value of the D&T defined benefit plan at age 55.

- The CIGNA cash balance plan is age and service weighted (3% to 8.5%) to more closely approximate the accumulation of value under the Tier 2 DB plan.

- The CIGNA cash balance plan plus SIP performance match results in age 55 values from 95% to 130% of the Tier 2 plan depending on payments under the SIP performance match.

- The CIGNA cash balance plan will boost the opening account balances of the small number of longer service/higher age employees in Tier 2 by about 20% to compensate for the fewer years available to them to accumulate benefits under the new plan.

COMMUNICATIONS

- D&T says "we didn't want to disadvantage anybody" and implied that the new plan "would be a big improvement over their old plan".

- CIGNA's communications:

  - will not make unequivocal statements about "will not harm" or "big improvement".

  - will say that the new plans are different, and results will depend in part on actions by the employees themselves, including participation in the 401(k) plan.

  - will stress the pay for performance characteristics of the SIP and cash balance plans.

  - will tout the ability to meet aggressive retirement goals with the new 401(k) and pension plans.

  - will include information about the need and ability to invest a substantial portion of 401(k) funds in equities.

  - will stress portability, tangible value, and competitive pay for performance.

- Results of Focus Groups with CIGNA employees find a favorable reaction to a cash balance plan and 401(k) performance-based payments.

- The only focus group reticence was that they didn't understand the present plan very well, and they found social security offsets and early retirement reductions confusing and difficult to use in planning.

- Factually, we know that the benefit earned from age 60 to 65 is going to be lower in the cash balance/SIP plans than under the present

DB plan. At the same time, the benefit earned at almost all ages below 60 is superior to the DB plan. This is the reason we have targeted participants with age plus service equal to 55 or greater, and are boosting their opening balances by about 20%. We will be explicit about these facts and the implications for retirement income with the small number of individuals affected.

GTM0923b.DB1

Hill, Denise OLP

From: Meyn, Gerald T OLP
To: Levinson, Donald M OL55C
Cc: Cushing, Kathleen J TLP; Sannicks, Kathy L TLP; West, Bill TLP; Tomci, Tiffani C TLP; Dickson, Victoria V TLP; Hill, Denise OLP; Gaspari, Joseph D OLP; Bucaccio, Patricia E TLP; Robinson, Deborah V OLP; Lane, Todd TLP; Harrell, Cisalee G SM2
Subject: Deloitte & Touche
Date: Tuesday, September 23, 1997 4:03PM

Don:

Attached is a commentary on the WSJ Article, including where D&T went wrong, and how we are and will be different. Here's a quick summary:

- o D&T didn't grandfather enough people.
- o D&T left themselves vulnerable at early retirement ages.
- o D&T stupidly promised "no harm" and "big improvement".

- o CIGNA's Tier 2 plan was already modest, especially around early retirement.
- o The cash balance plan is scaled 3% to 8.5%, more like DB plan values.
- o The SIP performance match is a significant boost to the present plan.
- o We've tested the plans and related communications with focus groups of employees.
- o CIGNA communications will always be honest, and not promise more than they can deliver.

Let me know if questions.

Regards,
Jerry

<<File Attachment: GTM0923B.D&T>>

RECEIVED
SEP 23 1997

WSJ 9/25 B1

Pension War Breaks Out at Accounting Giant

By Elizabeth MacDonald
Staff Reporter of The Wall Street Journal

You'd think Deloitte & Touche would be one firm that knows how to come up with a new retirement plan for its workers. After all, it's one of the world's top pen-

MANAGEMENT

sion-consulting firms, serving blue-chip clients like Microsoft Corp., General Motors Corp. and Chrysler Corp.

But its workers also know better than most employees how to judge a pension plan's impact, and now they're furious about the new plan Deloitte has adopted for them.

In January, the Big Six accounting and consulting firm enrolled most of its 14,000 workers in its new pension program, telling them it would be a big improvement over their old plan. But when employees crunched the numbers, they concluded that the new plan won't improve most workers' benefits and it will cut some pension payouts by nearly 70%, with employees aged 40 to 50 being socked the hardest.

Some employees in Deloitte's tax division are so angry they are threatening to decamp to other Big Six firms. Meanwhile, employees say Deloitte has threatened to fire anyone who talks to the media about the matter.

The firm declines to comment on the alleged threat, but it does appear to be trying to calm the waters. Partners in its New York, New Jersey and Connecticut offices, where the firm's tax experts are based, are informally telling Deloitte employees that the whole affair is a terrible mistake that will be corrected, according to several Deloitte employees. "We didn't want to disadvantage anybody," says James H. Wall, Deloitte's national director of human resources. "But certain individuals were disadvantaged."

In response to a reporter's query, Deloitte provided a statement saying that late last May, "we learned of unintended consequences for some employees. We are in the process of examining the extent of this and plan to make modifications to fully resolve the issue." At Deloitte, the partners' committee that makes recommendations on employee-retirement benefits is scheduled to meet next Monday at the firm's headquarters in Wilton, Conn., to discuss the brouhaha.

AFTER CRUNCHING the numbers, Deloitte employees find a new plan will cost most of them money.

Deloitte spokeswoman Ellen Ringel says the plan wasn't an effort to save Deloitte any money. A statement she provided yesterday from Deloitte's management says that it "modified its pension plan to better meet the retirement needs of our people by helping them achieve financial security at retirement and to provide an incentive for younger people to stay with the firm for a longer period of time."

The pension-payout reductions surprised outside experts. "Cuts on the order of 70%? I haven't seen anything like that—that's pretty deep," says Thomas Murphy, who has studied a summary of Deloitte's plan and is a consulting actuary and a principal at Kwasha Lipton Group, a benefits-consulting unit of Deloitte rival Coopers & Lybrand.

In the past, Deloitte's employee benefits have received high marks. Working Mother magazine recently named J. Michael Cook, Deloitte's chairman and chief executive, its Family Champion of the year for his firm's "promotion of family-friendly practices in the workplace," among other things. Mr. Wall also notes that Deloitte has beefed up its other employee-benefits programs over the last five years.

The pension flap started late last year, when Deloitte's board asked the firm's retirement-plan experts to draw up a new "cash balance" pension plan for all employees who weren't partners at the firm, including directors, who are a step below partners.

Partners would get to stay in their old plan, and employees aged 50 and over with 15 years or more of service would get to keep the benefits they had under the old plan.

The experts then told the board that this new plan "would not harm" any of the firm's employees, according to several

Please Turn to Page B10, Column 5

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Deloitte Pension War Breaks Out

Continued From Page B1

directors who talked with board members. The board subsequently yanked the old pension plan, effective Jan. 1, 1997.

Retirement benefits accumulate differently in different pension plans. In traditional pension plans, the value of the benefit grows progressively faster as an employee approaches retirement. But in cash-balance plans, benefits grow at an even rate from year to year. Though the design of such plans varies, they tend to pay out less to older workers over the long term than traditional plans, and they are easier and cheaper for employers to administer.

Deloitte's new plan packed a double whammy for certain workers. The formula Deloitte used to credit future contributions to the new plan resulted in lower benefits than the old plan would have provided, says Kwasha. It analyzed the summary distributed to Deloitte employees at the request of The Wall Street Journal.

In addition, when Deloitte pulled its employees out of the old pension plan, older employees lost the rapid growth in their benefit that they would have gotten under the old plan in the years just before retirement. As a result, many veterans won't receive nearly as much as they would have under the old plan.

On March 24, Deloitte's benefits administration division sent a memo to workers promising that each would get a new "personalized pension statement" on or about June 1. "The Firm is committed to helping you build long-term financial security," the plan's brochure promised.

On April 25, 10 tax directors e-mailed William Parrett, managing partner of Deloitte's Connecticut, New Jersey and New York region, to express their distress. "We're certainly concerned with [the plan's] financial implications for us and our families," the e-mail writers wrote. "It would probably also benefit all involved if some of those who designed the new policy would make themselves available to answer technical questions."

Several directors say Mr. Parrett was outraged when he found out about the problem and later assured them that it would be solved immediately. Mr. Parrett referred a reporter's calls seeking comment to Deloitte's public relations department, which declined comment.

But so far, employees say, the firm hasn't conducted any employee meetings or sent out any voice mail, e-mail or interoffice memos about the new program. In addition, Deloitte employees got their "personalized pension statements" in August, almost two months late. Deloitte has yet to provide the actual plan documents, which give more specific details.

Deloitte isn't the only Big Six firm that has gotten into trouble over employee pensions. Last May, the U.S. Supreme Court refused to review a November 1996 decision handed down in Cincinnati's sixth Circuit Court of Appeals against Ernst & Young.

Former partner Peyton Larue Simpson claimed that Ernst & Young had fired him because he was approaching the age when his retirement benefits would be vested. The court found that Mr. Simpson was one of 120 partners over age 40 who were laid off during an 18-month period after the 1989 merger of Arthur Young & Co. and Ernst & Whinney.

The court ruled that the firm, which also hired 162 new partners under age 40, fired the older partners to reduce its unfunded pension liability, then projected at $290 million. Mr. Simpson got more than $5 million in a judgment that included attorney fees, court costs and interest.

Retirement Plan Changes
Possible Media Questions
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Confidential

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new variable 401(k) match will help us share our success with our employees and give us the flexibility to increase retirement benefits when company performance is good.

You said the retirement program is changing for some employees. What do you mean by "some"?

Employees hired before December 31, 1988 will not move to a cash balance plan (22% of our U.S. employee population.) They will keep the traditional defined benefit plan. Many of these employees -- who on average have 20 years of service with CIGNA -- have earned substantial benefits under the current pension plan. Also, most of these employees are entering the career stage in which the traditional pension plan provides the highest growth in benefits. And, these employees have based their financial and retirement planning on the assumption that they will continue to earn benefits under the current CIGNA pension plan.

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Cash balance pension plans are different from traditional pension plans, so exact comparisons of benefits that cover all possible outcomes are difficult. The comparative results will depend on a broad range of variables, such as future salary, interest rates and

Social Security. Generally speaking, cash balance plans tend to provide larger benefits for shorter-service employees and comparable benefits for longer-service employees.

Again, our goal in providing retirement benefits to employees is to make retirement planning a partnership between the company and the employee and to provide benefits that help our employees meet their retirement income goals. As I mentioned before, the pension plan, whether it be the traditional pension plan or the cash balance plan, provides a secure, company-funded retirement benefit. We also offer a 401(k) plan, which allows the employees to contribute their own money for retirement and make their own investment decisions. CIGNA provides a match (50% up to 6%, plus a variable match up to 33 1/3% of the matchable 6%).

Cash Balance Plans

WILLIAM M. MERCER INCORPORATED

July 1996

P 2122

EPTO000421

Agenda

Overview of cash balance plans

- Basic design
- Transition benefits
- Corporate financial effects
- Ancillary benefits
- Executive benefits
- General discussion

772a
P 2123
EPTO0004214

Basic Design

Cash balance plans look like defined contribution plans

- Participant's benefit expressed as an account balance
- Account balance grows each year with employer "contributions" and "interest earnings" – "controlled growth"
- Accounts are nominal – do not depend on actual employer contributions or trust earnings
- At retirement/termination, account balance is available as a lump sum, or may be converted to an annuity

limits?

- if paid in a lump sum – no retiree medical premium → [illegible]

Basic Design

Cash balance plans are defined benefit plans

- Require actuarial funding; actual employer contributions to the trust vary from year to year
- No annual cash outlay required if the plan is overfunded
- Annuity benefit must be offered in lieu of lump-sum cash out
- Employer bears the ultimate investment risk and reward (until cash out)
- Employer bears the longevity risk (until cash out)
- Transition from a current "traditional" defined benefit plan does not require plan termination
- Subject to coverage by PBGC

Applet only w/ a lump sum

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P 2125

EPTO0004216

Example of Benefit Accrual

- Age at January 1, 1996 35
- Service at January 1, 1996 11
- Benefit-bearing pay at January 1, 1996 ..... $60,000
- Accrued benefit at January 1, 1996 under current plan (payable at age 65) $7,350/year

Year	Age	Service	Points	Contribution %	Benefit-Bearing Pay	BOY Account Balance	Contribution	Interest Crediting Rate	EOY Account Balance
1996	35	11	46	5%	$60,000	$21,840	$3,000	7%	$26,260
1997	36	12	48	5%	$63,000	$28,260	$3,150	7%	$31,360
1998	37	13	50	6%	$66,000	$31,360	$3,960	7%	$37,650
1999	38	14	52	6%	$69,500	$37,650	$4,170	7%	$44,600

EPT0000421 P 2126

775a

Elements of Plan Design

Employer "contributions" to accounts - pay credits

- Flat
- Vary by service
- Vary by age
- Vary by age and service (points)

- Vary by salary (integration with Social Security)

- Frequency and spacing of breakpoints

- Endpoints

776a
P 2127
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Elements of Plan Design

"Interest" credits

- Fixed
- Tied to an external rate
- Ad-hoc adjustment each year
- Minimum guarantee
- Status-based

- Frequency of change

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P 2128
EPTO0004219

Interest Crediting Mechanisms in Cash Balance Plans

Mercer survey of 105 plans for the IRS

Frequency of change to interest crediting rate

91	Annually
1	Semiannually
3	Quarterly
9	Monthly
1	Quinquenially - twenty 5 year
105	

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P 2129
EPTO0004220

Interest Crediting Mechanisms in Cash Balance Plans

Basis of Interest Crediting Rate

Treasury Bills < 1 year	+0.00	2
	+0.50	1
	+1.00	2
	+1.50	1
	+2.00	3
Treasury bills 1 year	1.00	1
	+0.00	35
	+0.75	1
	+1.00	1
	+1.50	1
	+2.00	1
	Other	1
Treasury bonds 30 years	+0.00	4
	+1.00	1
Treasury notes 3–7 years	+0.00	4
	+0.50	1

CPI	+0.00	2
	+2.00	4
	+3.00	2
PBGC Rates	Immediate	8
	110% of immediate	4
	Immediate + 0.75	1
	Deferred	2
120% of Mid-term Applicable Federal Rate		1
Trust yield		1
65/35 Stock/Bond Index + 4.5%		1
Combination of Treasuries		11

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P 2130
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Elements of Plan Design

"Contribution"/"interest" tradeoff

- High "contribution"/low "interest"
- Low "contribution"/high "interest" – attempts to cement plan – favors long service ees

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P 2131

EPTO0004222

Elements of Plan Design

Vesting

- Five years
- Faster than legal minimum

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P 2132

EPTO0004223

Elements of Plan Design

Withdrawals and loans

- Withdrawals are not allowed legally
- Design does not ~~generally~~ include loans

7828

P 2133

EPTO0004224

Agenda

Overview of cash balance plans

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P 2134 EPTO0004225

Transition Considerations

- The patterns of benefit accrual under a "traditional" defined benefit plan and a cash balance plan are quite different
  - benefits accrue more quickly under a cash balance plan
  - benefits in traditional defined benefit plans often take a significant jump upon eligibility for early retirement
- As a result, changes from one plan to another in mid-stream can give rise to significant loss of expected benefits
- Adjustments are often made to protect some or all of participants' benefit expectations at transition
- Transition considerations vary widely by age and service combinations

Transition Alternatives

Initial account balance strategy plays a key role

- There is *no* legally required level for the initial account balance

- equal to accrued Benefit PV
  or
  ∅

EPTO0004227 P 2136

785a

Transition Alternatives

Initial account balance strategy plays a key role

- There is *no* legally required level for the initial account balance

"Grandfathering" of the current plan benefit ("overlays")

- Frozen (legal minimum) grandfather
- "Dynamic" grandfather for some period of time – i.e. 5yr transition

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P 2137

EPTO0004228

Transition Alternatives

Initial account balance strategy plays a key role

- There is *no* legally required level for the initial account balance

"Grandfathering" of the current plan benefit ("overlays")

- Frozen (legal minimum) grandfather
- "Dynamic" grandfather for some period of time

Cash balance for future service only

- Frozen current plan benefit
- Protect current plan benefit from inflation

P 2138
EPTO000422
787a

Transition Alternatives

Initial account balance strategy plays a key role

- There is *no* legally required level for the initial account balance

"Grandfathering" of the current plan benefit ("overlays")

- Frozen (legal minimum) grandfather
- "Dynamic" grandfather for some period of time

Cash balance for future service only

- Frozen current plan benefit
- Protect current plan benefit from inflation

Provide supplementary employer "contributions" in the cash balance plan – if ees are severely disadvantaged

testing for Non discrimination

HCE v NHCE

pay limited to $50,000

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P 2139

EPTO0004230

Transition Alternatives

Initial account balance strategy plays a key role

- There is *no* legally required level for the initial account balance

"Grandfathering" of the current plan benefit ("overlays")

- Frozen (legal minimum) grandfather
- "Dynamic" grandfather for some period of time

Cash balance for future service only

- Frozen current plan benefit
- Protect current plan benefit from inflation

Provide supplementary employer "contributions" in the cash balance plan

Provide additional interest "earnings" in the cash balance plan

- On initial account balance
- On total account balance

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P 2140

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Transition Alternatives

Initial account balance strategy plays a key role

- There is *no* legally required level for the initial account balance

"Grandfathering" of the current plan benefit ("overlays")

- Frozen (legal minimum) grandfather
- "Dynamic" grandfather for some period of time

Cash balance for future service only

- Frozen current plan benefit
- Protect current plan benefit from inflation

Provide supplementary employer "contributions" in the cash balance plan

Provide additional interest "earnings" in the cash balance plan

- On initial account balance
- On total account balance

Increase initial account balances to recognize the value of anticipated benefits

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P 2141

EPTO0004231

Transition Alternatives

Initial account balance strategy plays a key role

- There is *no* legally required level for the initial account balance

"Grandfathering" of the current plan benefit ("overlays")

- Frozen (legal minimum) grandfather
- "Dynamic" grandfather for some period of time

Cash balance for future service only

- Frozen current plan benefit
- Protect current plan benefit from inflation

Provide supplementary employer "contributions" in the cash balance plan

Provide additional interest "earnings" in the cash balance plan

- On initial account balance
- On total account balance

Increase initial account balances to recognize the value of anticipated benefits

Can "mix and match"

Provide transition on a "window" basis

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P 2142

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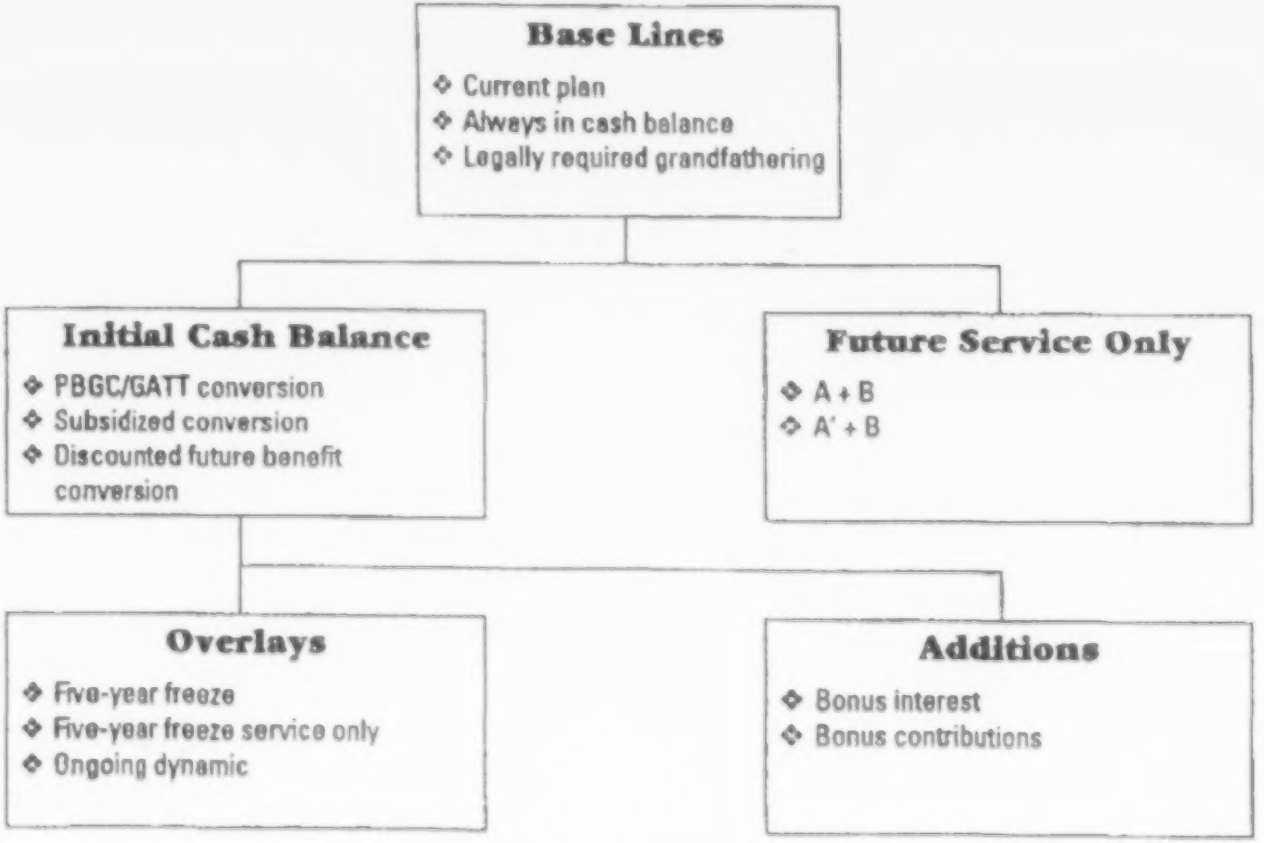
Summary of Transition Options



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P 2143

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Effects of Planning vs. Reality

Interest rate scenarios

- Planning
- 1970s scenario ↑
- 1980s scenario ↓

Interest rate	↑
Cash balance	↑
Minimum grandfather value	↓
Interest rate	↓
Cash balance	↓
Minimum grandfather value	↑

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P 2144
EPTO0004235

Transition Evaluation Criteria

- Ability to make participants "whole"...
  - ...guaranteed
  - ...targeted
- Adjustment to changes in economic conditions
- Simplicity/complexity...
  - ...communication to participants
  - ...administration
- Degree of employer discretion
- Creation/avoidance of "bright lines"
- Corporate financial effects

794a
P 2145
EPTO0004230

Agenda

Overview of cash balance plans

- Basic design
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P 2146

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Corporate Financial Effects

- Cost of a cash balance plan can be put at any level ~~relative~~ lower to the current plan
- Costs for inactive employees are fixed – +V ees
- "Equal cost" solution

  ...creates winners and losers, given the pattern of benefit accruals
  ...severely constrains transition benefits unless ultimate benefit levels are cut
- Need to distinguish "long-term" and "short-term" transition cost effects
- Frontloading transition benefits may significantly increase need for cash contributions
- Changes in employee career patterns will affect ongoing costs

  ...anticipate in actuarial assumptions
  ...emerge as actuarial gain/loss

796a
P 2147
EPTO000423

Agenda

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Issues in Design of Ancillary Benefits

- How much subsidy (compared to vested termination baseline)
- Integration of pension benefits with other benefits
- Flexibility of employee choice
- Tax effectiveness
- Management of disabled employees

EPT0004240 F 2149

Death Benefits

Death Benefits Alternatives

- Pay entire account balance (as lump sum or annuity)
- Pay one-half of account balance → in lieu w/ ERISA minimum
- Pay ERISA joint and survivor annuity → minimum
  minimum death benefits set by plan

Note: Current pension plan death benefit is one-half of an immediate annuity based on pay at death and 30 years of service

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P 2150

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Disability Design Alternatives

Legal Minimums and Maximums

Minimum

- No required additional benefit (must recognize vested terminated status)

Maximum

- Immediate, unreduced, projected benefit
- Project service to normal retirement age
- Constant pay

Other Approaches

- Continued accruals (perhaps indexed)
- Social Security offsets

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P 2151
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Disability Benefits

Summary of Current Long-Term Disability Benefits

- pension plan provides annuity payable at age 65, based on compensation at termination and projected service
- LTD plan provides 60% benefit to age 65, less Social Security and workers compensation

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P 2152
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Disability Design Alternatives in Cash Balance Plans

Minimum

- Treat individual as terminated

Maximum

- Project contribution credits and interest to normal retirement age
- Divided by normal retirement age annuity factor
- Pay immediately

Continued Accruals

- Treat disabled individual as active
- Use pay before disability (perhaps indexed)

Pay Immediate Accrued

Base immediate annuity on:

- Current account with age-65 annuity factor; or
- Projected account (interest only) with age-65 factor

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P 2153

EPTO0004244

Agenda

Overview of cash balance plans

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P 2154

EPTO0004245

Executive Benefits at Companies with Cash Balance Plans

- Wide variety of practice
- Heavily dependent on individual company situations
- Majority practice in larger corporations is a final average pay supplemental plan
- Small minority has cash balance design supplemental plan

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P 2155
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Issues in Executive Cash Balance Plans

- Inability of cash balance to provide adequate benefits to "fast-trackers"
- What to do with non-executive "fast-trackers"
- $150,000 cap on earnings — employees who fall in the "gap"
- What qualified benefit to offset from SERP
  ...annuity value/lump-sum value
  ...conversion factors (age, interest rate)

gappers - CB w/out limits
CB w/ limits
top hat - total lump-sum
CB

- Coordination of election of optional forms between qualified plan and cash balance plan

contracts?
top-hat participants - protect from limits.
Directors - CBP supp. plan

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P 2156

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Agenda

Overview of cash balance plans

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806a
P 2157
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Why cash balance?

Cash balance plans are popular with employees

- Benefits visible and easy to understand
- Benefits are payable as a lump sum and are portable
- No age/service barriers to increased benefits

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P 2158

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Why cash balance?

Cash balance plans are popular with employers

- No need to terminate defined benefit plan
- Funding flexibility
- Cost reduction from investment earnings in excess of interest allocated to participants
- Reduce corporate risk through lump-sum payments and career-average pay
- Enhanced employee appreciation
- Simplifies intra-company transfers
- Masking a cut in pension plan benefits
- Smoothes out "bright lines" in current plan (especially early retirement subsidies)
- Easier link to total compensation
- Opportunity to simplify historical accretions in the current plan

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P 2159

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Types of Retirement Plans

Defined Benefit Plans

Final Average Pay
- ❖ Traditional
- ❖ Life cycle

Career Average Pay
- ❖ Traditional
- ❖ Indexed career average
- ❖ Cash balance
- ❖ Participant-directed cash balance

"In Kind" Plans

Medical

Defined Contribution Plans

Traditional
- ❖ 401(k)
- ❖ Thrift
- ❖ Money purchase
- ❖ Profit sharing

Age-/service-weighted

Target benefit

ESOP

414(k)

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P 2160

EPTO0004251

Summary of Key Differences

	Traditional Defined Benefit	Defined Contribution	Cash Balance
Typical pattern of benefit accrual	Heavy in later years	Heavy in earlier years	Heavy in earlier years
Benefit paid to early leavers	Relatively low	Relatively high	Relatively high
Benefit paid to mid-career hires	Relatively high	Relatively low	Relatively low
Portability*	Worse	Better	Better
Investment risk	Borne by employer	Borne by employee	Split
Mortality risk	Borne by employer	Borne by employee	Borne by employee (if lump sum)
Typical investment policy	More aggressive	Less aggressive	More aggressive for employer Less aggressive for employee
Usual form of benefit payment	Monthly income	Lump-sum payments	Lump-sum payments
Benefits fully funded?	Not necessarily	Always	Not necessarily
Requires PBGC insurance to cover unfunded benefits?	Yes	No (but not necessary)	Yes
Requires actuarial valuation?	Yes	No	Yes
Attention from participants	Low until close to retirement	High throughout career	High throughout career

* *Assuming covered by plan of one type over entire career*

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P 2161

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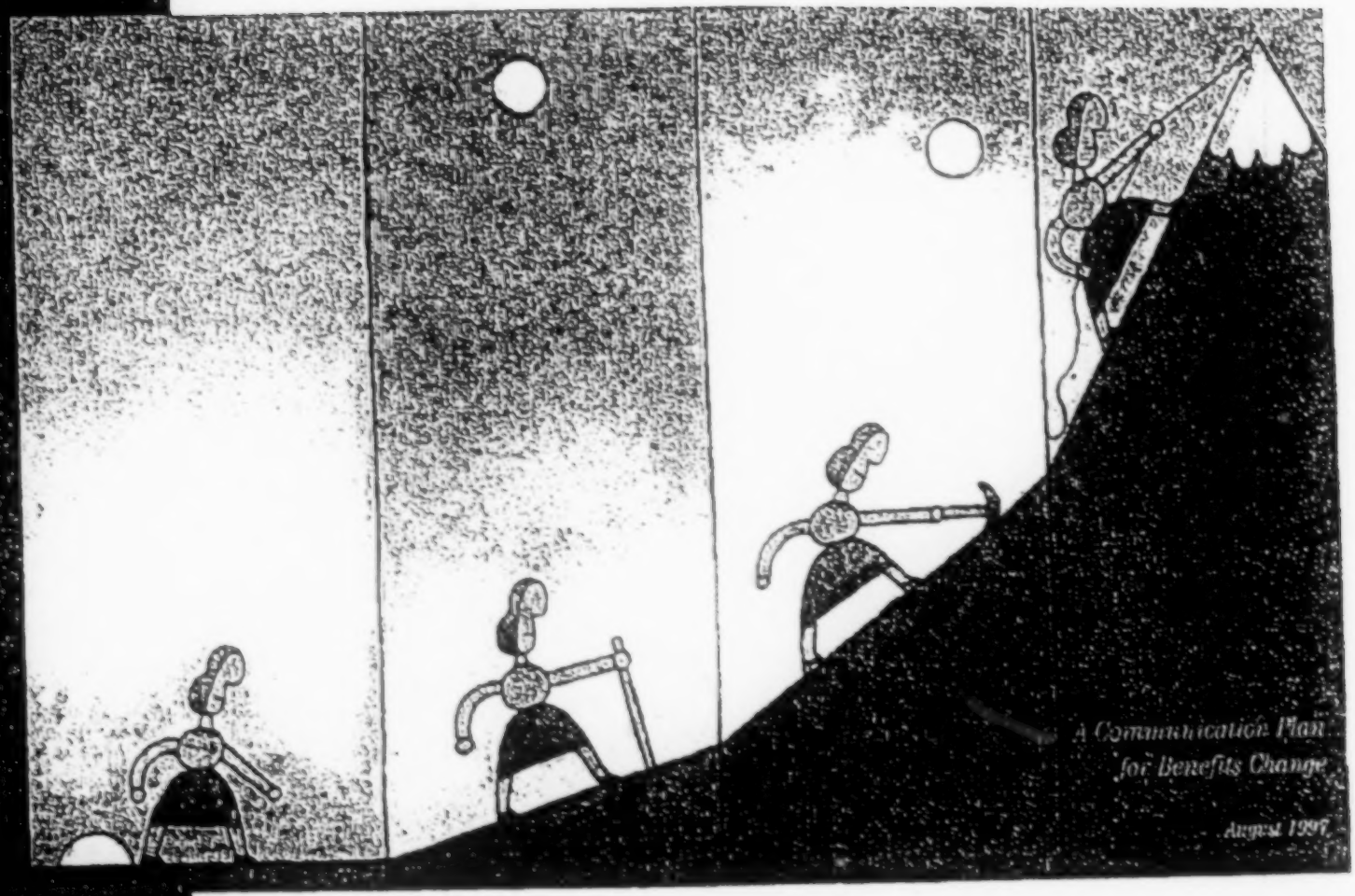
Meeting the Communication Challenge



William M Mercer

CIGNA

THE COMMUNICATION CHALLENGE
—the objectives you've set 1

BEGINNING THE CLIMB
—the changes ahead 2

ASSURING SOLID FOOTING
—key messages for emphasis 4

CHOOSING THE RIGHT TRAIL
—a long-term communication strategy 7

THE VIEW FROM THE TOP
—measuring your success 11

THE TRAIL MAP
—a campaign for your communications 13

MERCER FEES 15

THE MERCER ADVANTAGE
—a few of the communications assets 19

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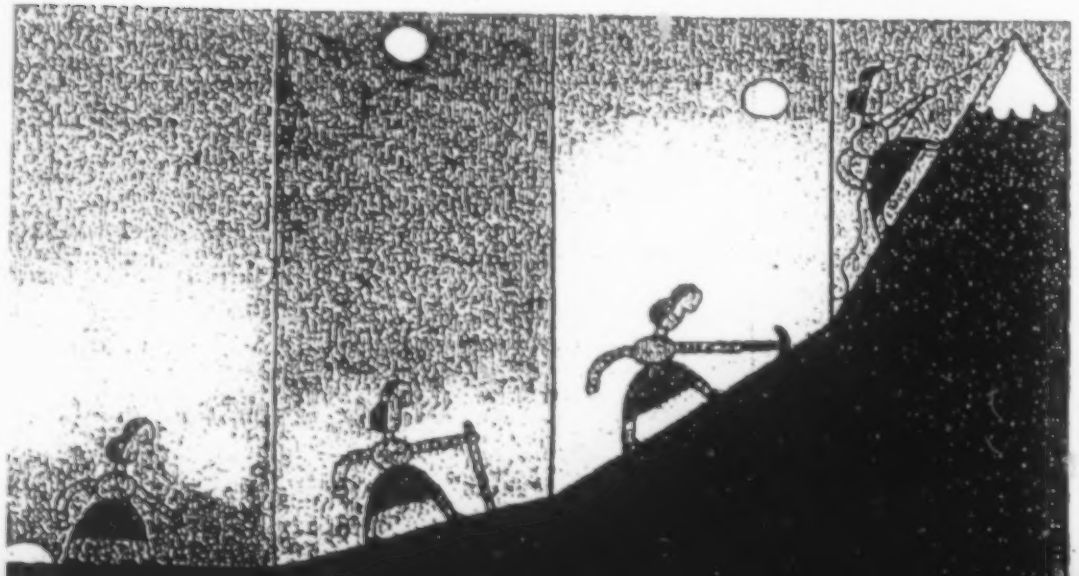
Communication Objectives

- Dispel perception of a takeaway and focus on the "new deal." Create awareness of equity.
- Educate about the total integrated retirement program, including cash balance and SIP.
- Provide targeted communications to employees based on impact and need, so that each employee understands the changes and CIGNA's motivation for the change.
- Enable divisional managers to support the program and to be program advocates.
- Encourage employees to participate in the SIP.



THE COMMUNICATION CHALLENGE
—the objectives you've set

William M. Mercer is pleased to provide this communication plan to CIGNA. We have given a lot of thought to the challenge you described: helping to communicate changes to your retirement benefits. The challenge goes beyond simply explaining the facts about the changes, however.

Employees need a more complete perspective on what is at the "end of the trail"—the total retirement picture and how they need to prepare now to assure their financial well-being at retirement. In our discussions with CIGNA, you have indicated that you hope to build a more integrated approach to retirement benefits communication in two arenas: to create a direct link between the cash balance plan and SIP, and between guaranteed benefits and the potential for more.

The following pages provide a sure-footed plan to help employees move through this transition phase with appreciation of the substantive benefits CIGNA provides.

BEGINNING THE CLIMB
—the changes ahead

The retirement benefits changes planned for January 1, 1998, represent a significant shift in the benefits philosophy CIGNA communicates to employees.

First, the Tier 2 pension plan will be converted to a cash balance plan, and some Tier 1 employees will be included. Each employee's accrued benefit will be converted to an opening cash balance account clearly showing the current value of the benefit. It will now be easy for employees to monitor this "fixed investment" account, along with their investments in the savings plan, to track the build-up of their total retirement capital and plan for their future security.

Second, in establishing opening accounts, CIGNA will provide a transition benefit to older, long-service employees (with combined age and service of 55 or more) to offset the loss of benefits they might have had under the current plan. Their opening account will be based on benefits payable at age 62, instead of age 65.

Changes That Lie Ahead

- Conversion of pension benefits to a cash balance account for most employees
- Lump-sum payment option for employees in the cash balance plan
- A variable match (company stock) in the SIP Plan linked to company profitability
- New investment fund choices in the SIP

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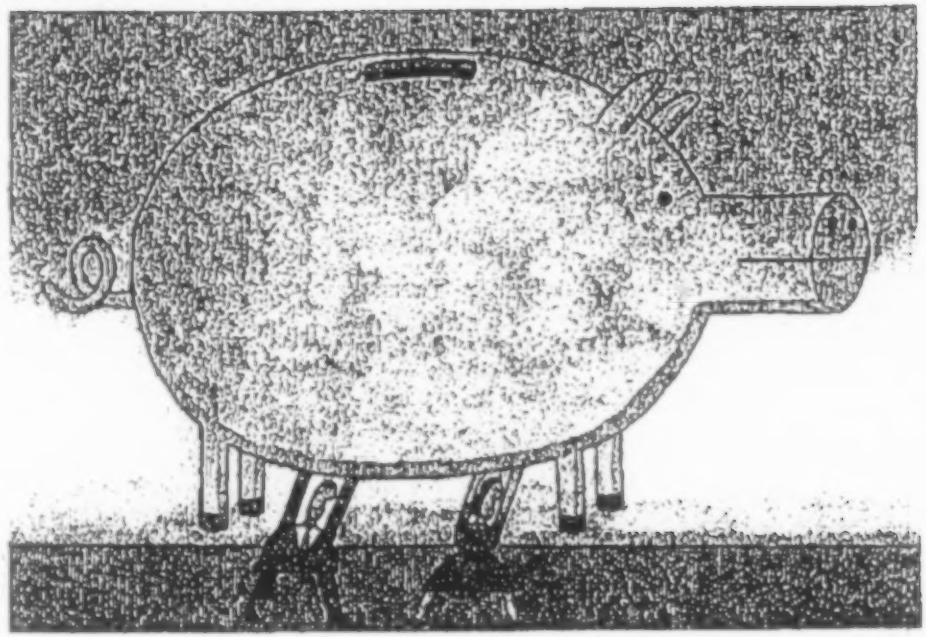
Third, there will be a variable matching contribution in CIGNA stock, linking a portion of the SIP match with business results.

Fourth, employees in the cash balance plan will be able to receive their retirement benefit as a lump sum if they choose.

Fifth, CIGNA is adding four new investment funds to offer higher risk/return options for employees. This will complement well the cash balance "fixed income" plan.

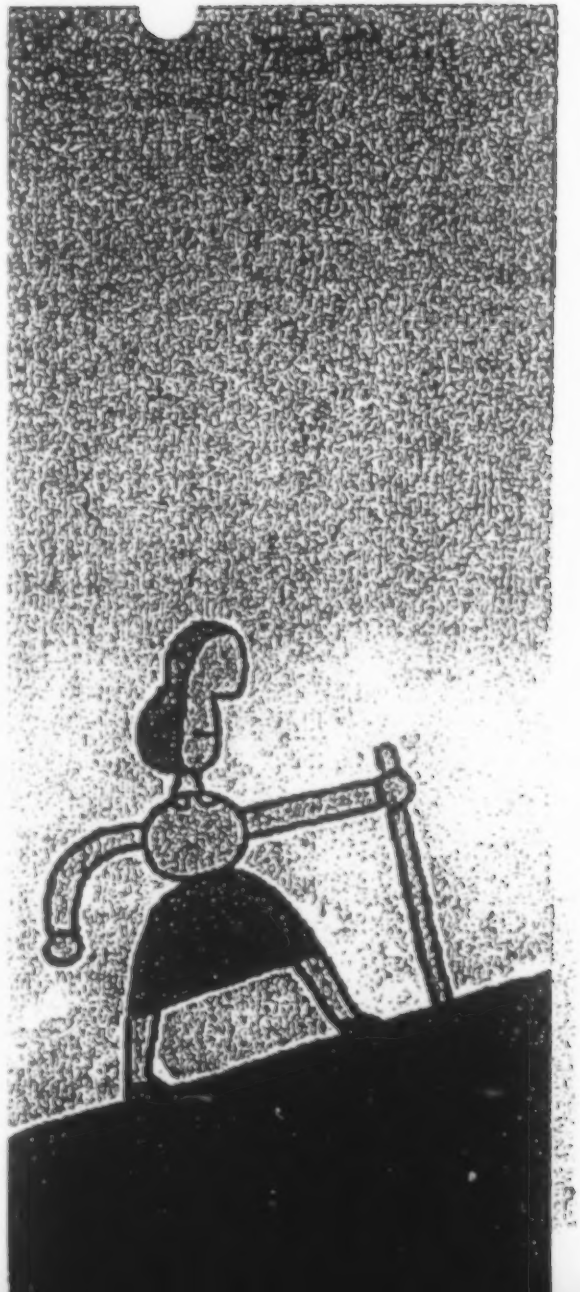
Complicating the communication, however, is the decision to leave current pension benefits intact for certain Tier 1 employees—those hired before 1989 (whose age plus service is 45 or more). These employees will remain in the pension plan and will thus not have the lump sum option. There are plusses and minuses to this message, as there are for employees moving to the cash balance arrangement.

CIGNA and employees partner in saving for the long-term.



CIGNA is moving in this direction for a number of reasons, but primarily to:

- Align the retirement benefits program with strategic workforce and other business objectives.
- Introduce benefits that give CIGNA a competitive advantage. (You've indicated that you currently fall 6% to 8% short of the median value of competitor plans.)
- Simplify retirement benefits so that employees can understand what they have and what benefit value they can expect in the future.
- Communicate that employees share responsibility for retirement income.
- Introduce more flexibility.
- Provide more universal value, since benefits will accrue earlier in an employee's career and will be more portable.



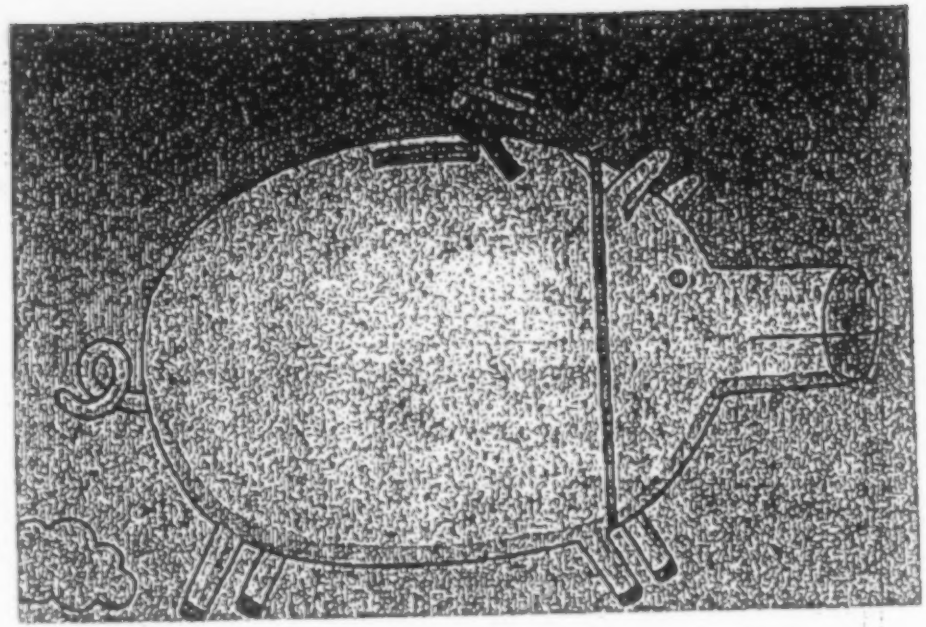
ASSURING SOLID FOOTING
—key messages for emphasis

The primary message CIGNA wants to emphasize in its retirement benefits communi-cations is one of shared responsibility. The new program will make it much easier for employees to plan for their retirement. If they are to have what they need at retirement, however, they must put personal savings aside, and the sooner the better. Employees must understand the extent, as well as limits, of their benefits program, and take full advantage of their pre-tax savings plan as a supplement to other company retirement and Social Security benefits they will receive. Currently, 25% of employees do not participate in the SIP. We will want to show, in as tangible terms as possible, the income replacement employees can expect from their plans, so they can assess what more is needed. We will also want to market the tax and other advantages of saving through SIP.

A cash balance approach, as CIGNA is implement-ing, makes the communication easier, but the transition will have some challenges. On the positive side, employees will be able to see the cash value of their benefit through regular account

statements, similar to what they've received for their savings plan account, and be able to monitor their account growth. In comparison to a complicated pension formula, this will be easier for employees to understand and track. Over time, it will also be a good opportunity for CIGNA to educate employees about the basics of financial planning and investing, so employees can take full advantage of their benefits. Our communication plan includes specific techniques for how to measure employee understanding and acceptance of these and other key messages.

The important shift is to ensure that employees take responsibility for their financial well-being in retirement.



What will create difficulties as you move to cash balance is employees' lack of understanding of their current retirement benefits. They will question the impact of the change on other employees in mid-career and near retirement. Until employees get personalized statements of their opening account balance and projected retirement benefits, they will be suspicious of takeaways. Recognize that there will be no resolution to these concerns until employees receive their personal statements.

You also have many employees who will want all of the detail about the formula and other provisions, and who will question every assumption and recalculate every figure. We will need to provide enough information to satisfy this audience, while helping them to keep the whole package in perspective.

CIGNA has decided, for a number of reasons, not to compare the old to the new plans; the lack of this information may frustrate certain employees who want proof that they've been kept "whole."

They will have the benchmarks from their recently distributed total compensation report to make their own comparisons. The development of a retirement planning section to the next report will be critically important for that reason.

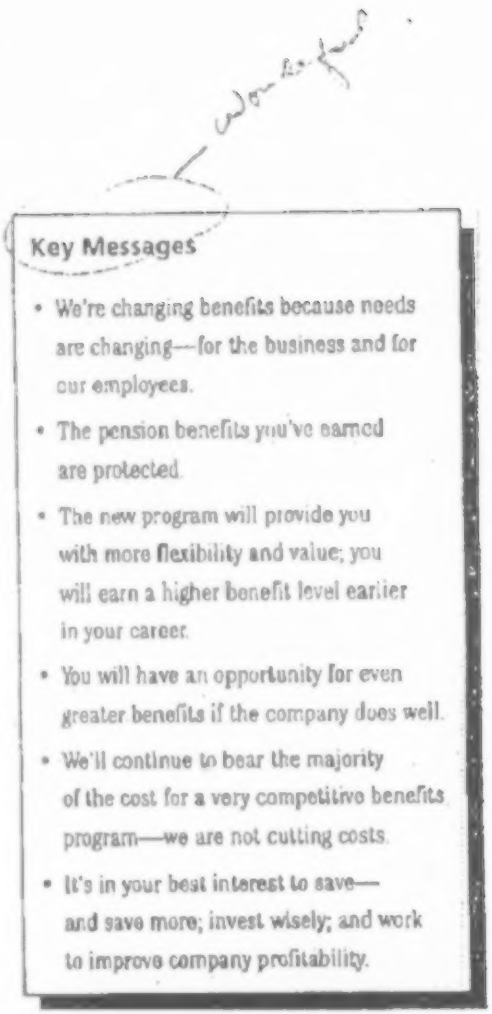
Our objective will be to market and promote the new plans, announcing the changes and following up with personalized communications about each employee's opening account balance. We will want to focus on the retirement capital requirements for each employee and how the new program helps to

achieve this. The important shift is to ensure that employees take responsibility for their financial well-being in retirement, plan ahead, and take necessary actions to meet this goal.

While we will do some basic education about financial planning and investing, these topics must realistically be part of a longer-term communication effort over several years. During the transition to a cash balance approach, CIGNA will need to concentrate first on the basics.

Another difficult message to communicate will be the idea of *trade offs*. The changes will involve some enhancements, some restructured plans, and some limitations. Most people are resistant to any such change; many will try to compare the new to the old, point for point; and many will be suspicious. What helps in this situation is to acknowledge the reality ("Yes, there are trade-offs."), to be forthright about any negative news, to reiterate the business reasons for the new framework, to benchmark competitor plans, and to reinforce the idea of total compensation or total value linked to results.

The communication plan described in the next few pages outlines the approach we recommend for CIGNA. It incorporates what we've learned thus far in our discussions with CIGNA, as well as the *best practices* we have learned from our work with many other clients. It is based on the roles and information needs of your multiple audiences. It is also based on our knowledge about how people best internalize and accept change.



CHOOSING THE RIGHT TRAIL
—a suggested communication strategy

There are several ways to climb a mountain. You can use ropes to scale the rock face. Or you can take a trail that circles to the top but ultimately gets to the same place. The difference is:

- How much energy do you want to exert?
- What shape are you in—are you prepared for rigor or for easy exercise?
- What tools do you have that equip you for a climb?
- How much time do you have?
- How big is the expedition—are you alone or in a group?

This analogy has direct application to the communication plan that you choose to introduce benefits change.

The communication approach we suggest here is what we consider to be an *intermediate* trail, having taken into consideration your timeframe, limited internal resources, structure and objectives.

Based on our *best practice* knowledge and what we know about CIGNA's plan design, objectives and culture, here is the communications approach we would suggest for changes to your retirement benefits.

For H.R. generally and/or Call Center staff . . .

Bulletins Develop a bulletin series (perhaps on E-mail) to keep H.R. apprised in advance of implementation plans and strategies. (The first issue would give an overview of the new program and explain the purpose and context of the changes; the second would provide communication plans and other implementation details, etc.)

Briefing Session Hold a training event to cover all details of the new program to equip H.R. staff members for their administrative and communication roles. You are likely to need at least one full day for this.

Training for Call Center Staff Develop appropriate procedures, guidelines and response tools to prepare Call Center staff for the "rush" of questions.

Train-the-Trainer Session Meet with meeting leaders for training in program details and communications.

Implementation Guide Provide an implementation guide as a tool kit for meeting leaders, with slides, script notes and tips for holding employee meetings; details about the plan design; a Q&A to help them handle employee questions; and other related information.

For line managers . . .

Executive Presentation Develop a presentation on the retirement benefits philosophy for delivery by a senior executive at management forums to show publicly that the business leaders are behind the change—that it is not simply an H.R. initiative.

Briefing Papers Develop a series of briefing papers (white papers) to give managers advance information about what's planned, what it means to the business, the impact on employees, and how managers can help. This vehicle can includes talking points for managers to integrate into their "hall talk" or staff meetings with employees, as well as Q&As to help them respond to employee questions. (The first would outline the retirement benefits framework and request their support; the second would discuss the roll out; etc.)

Listening Device Establish a listening device, through E-mail or a voice mailbox, to encourage feedback and suggestions from both H.R. staff and divisional line managers, and to surface the employee issues they're hearing on the front line.

For employees ...

Target Memo to Tier 1 — Notify certain employees that they are being kept in the current plan and explain why.

Newsletters — Develop a newsletter series to inform employees about benefits changes. The first would discuss the redesign process, the overall retirement benefits strategy and why change is needed. The second would deal in more detail with specific plan changes. The third would deal with the investment funds, etc.

Plan Information Kit — Prepare a comprehensive information kit with a brochure on the new cash balance and SIP plans, a Q&A, worksheets and forms.

Video — Develop a video summary of the new plans for use at employee meetings or as a stand-alone where meetings cannot be held.

Discussion Forums — Hold meetings to explain the changes and provide employees with an opportunity for discussion and clarification. Also offer one-on-one sessions with older employees closer to retirement who may need personal discussion time.

Listening Device — The Call Center representatives will be available by phone for any questions, but you should also evaluate the effectiveness of the communications. One possibility would be a short survey of employees in early 1998. You may also want simply to hold a few focus groups, as is your tradition.

Investment Decision Guide and Fund Figer — Encourage employees to review their investment choices in the context of a total financial plan. Explain the new fund choices, along with basic investment concepts: time horizon, risk profile, balanced portfolio, etc. Explain the differences among the funds, and further promote the SIP.

*Personalised Statement** — Distribute a statement to each employee with an actual opening account balance and projections to future retirement ages, e.g., 55, 60, 62, 65. (Many clients provide two statements—an estimate when the plan is announced, based on data as of an earlier cut-off date, and then a second statement of the actual balance when final data is available. We feel this is the best approach, while recognizing that CIGNA's internal resources may not be able to provide early data for estimated balances.)

For executives ...

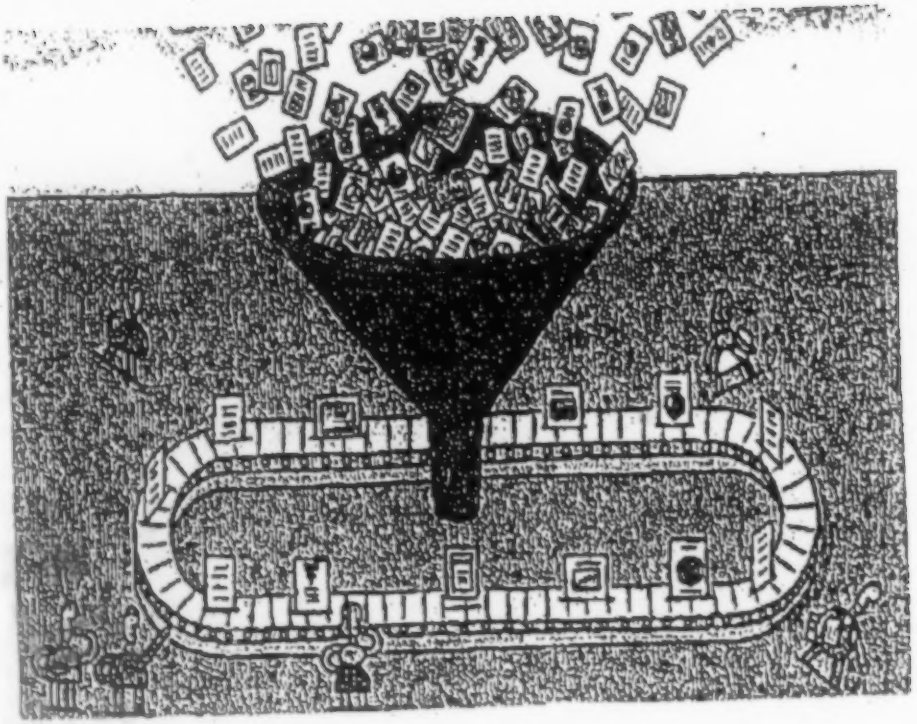
Letter from CEO with Supplementary Brochure — The senior leader should sign the memo communicating the impact of plan changes on executive benefits. The memo can accompany a descriptive brochure with details.

**More information on the personalized statement will be sent to CIGNA in a separate proposal.*

The communication plan incorporates print media, face-to-face communications and some electronic vehicles. It is our understanding that CIGNA does not currently use an Intranet or other technology besides E-mail for internal communication. Mercer also specializes, however, in the development of Intranet communications, voice enrollment and other communications technology. If you are interested in these automated forms of communication at any point, we would be happy to discuss our capabilities.

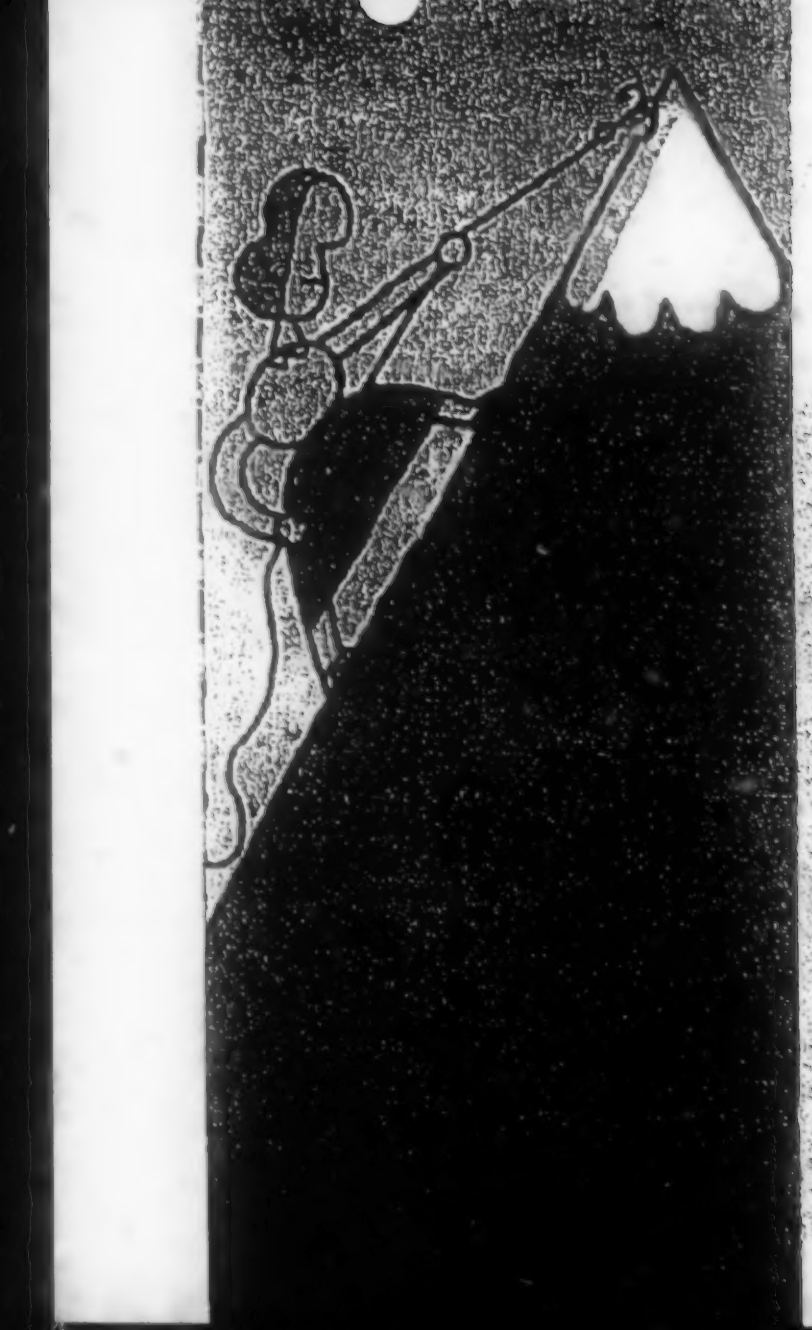
It is our understanding that you have recently developed a new brand identity—*Signatures*—to provide continuity to your benefits communications. We will use the new identity and formats to convey the value of the program and the pride the company takes in the competitive benefits it provides.

Communications will simplify complicated plan and investment information and funnel it to employees so they can easily understand and act on it.



In 1998, after this transition, we can help CIGNA to develop longer-term strategies to continue the retirement and investment education process, promoting employee participation in the SIP, and helping employees to become more astute investors and retirement planners.

The next page begins to map out the workplan for the introduction of changes in 1997.

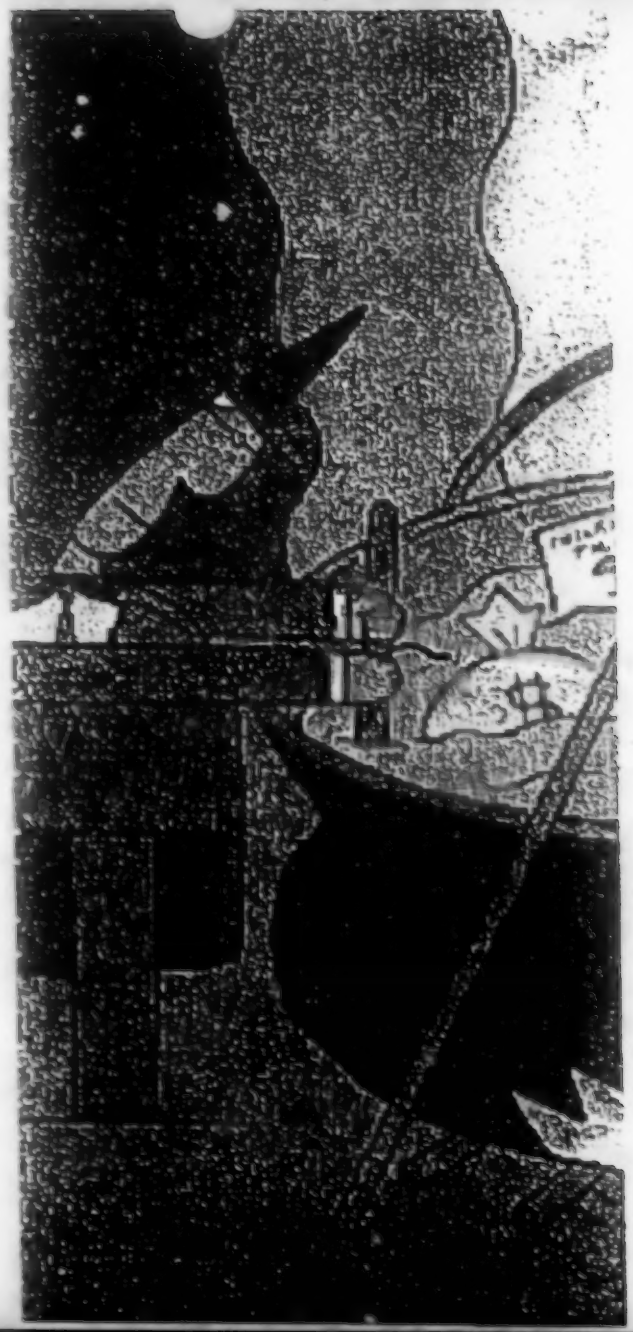


THE VIEW FROM THE TOP
—measuring your success

As mentioned before, communication of changes such as these to your retirement benefits is only the first phase. You've scaled the first peak by communicating plan details, but there are more mountains left in the chain—more communications needed before an employee is fully equipped to plan for retirement, invest wisely and put personal savings aside.

Before you scale the next peak, it will be important to measure the success of the steps you've already taken. We've suggested several listening devices, but there are other measures as well. For your consideration, on the next page we suggest measures that would align with your communication objectives.

Objectives	Measures	Results
• Dispel perception of a take-away and focus on the "new deal." Create awareness of equity.	• In sensing devices, 75% of employees rate the new plan positively.	TBD
• Educate about the total integrated retirement program, including cash balance and SIP.	• Each communication piece emphasizes the integration theme in a visible way: – first in order of importance thematically – visually displayed in graphics – reinforced throughout text	TBD
• Provide targeted communications to employees based on impact and need, so that each employee understands the changes and CIGNA's motivation for change.	• Each target group receives tailored communication. – Tier 1 employees remaining in the current plan – Employees who have investments in the discontinued fund – Healthsource employees – Executives with supplemental benefits – Call Center representatives – H.R. generalists – Divisional managers – Employees close to retirement	TBD
• Enable divisional managers to support the program and to be program advocates.	• In sensing devices, – 85% of managers say they had the information they needed – 85% of managers say they support the change	TBD
• Encourage employees to participate in the SIP.	• Increase the number of employees who participate in the SIP by 15% by July 1998. • Increase the number of employees contributing to the SIP by at least 10% by July 1998.	TBD



THE TRAIL MAP
—a workplan for your communications

To ensure that your communications produce the results desired, it is important to spend time at the start of the project to consider all issues and contingencies. While our depth and breadth of experience in managing communication programs of this sort will minimize the time requirements for CIGNA staff, we will still need to fine-tune our process and media recommendations in discussions with you and update the following workplan in the start-up phase of this assignment.

As we begin the project, we will need a full-day kick-off meeting for the CIGNA and Mercer teams. During this meeting, we will

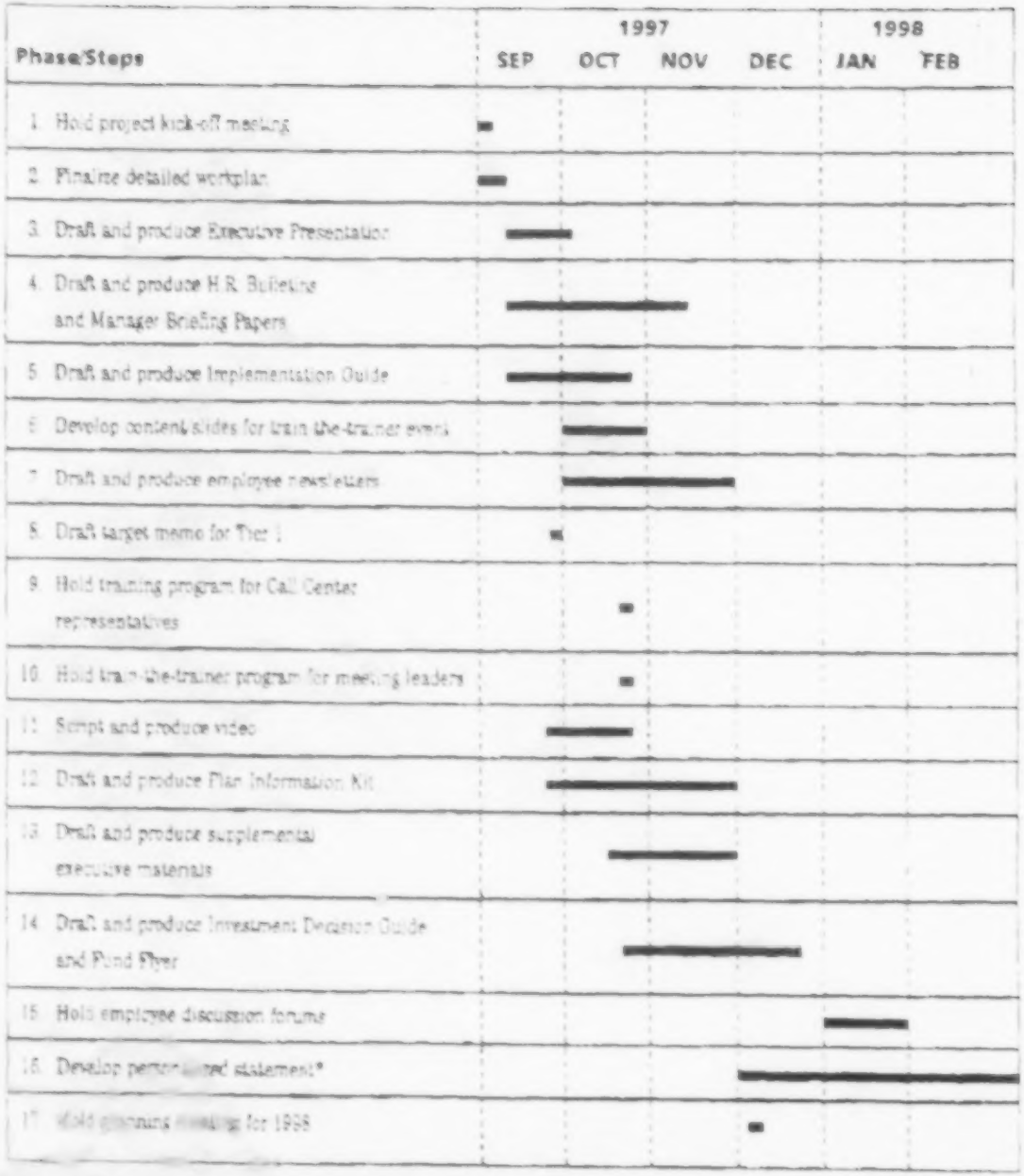
- Introduce our core team;
- Confirm objectives, deliverables and measures of success.
- Discuss the approach outlined in this plan, including all building blocks of training and communication, and modify it based on CIGNA input;

8254

- Clarify responsibilities, approval processes and working relationships;
- Outline content for the first few media items; and
- Schedule any future meetings needed.

After this planning session, our writers and designers will then begin drafting the program materials for your benefits communication as outlined in the previous section.

Our ability to complete the work proposed will depend in large part on CIGNA's ability to quickly facilitate, process and approve our work, so that we can move media into production. As we have further discussions and begin to work with you, we will be happy to adapt our services, style and recommendations to your preferred ways of working.



Phase/Steps	1997 SEP	OCT	NOV	DEC	1998 JAN	FEB
1. Hold project kick-off meeting						
2. Finalize detailed workplan						
3. Draft and produce Executive Presentation						
4. Draft and produce H.R. Bulletins and Manager Briefing Papers						
5. Draft and produce Implementation Guide						
6. Develop content/slides for train-the-trainer event						
7. Draft and produce employee newsletters						
8. Draft target memo for Tier 1						
9. Hold training program for Call Center representatives						
10. Hold train-the-trainer program for meeting leaders						
11. Script and produce video						
12. Draft and produce Plan Information Kit						
13. Draft and produce supplemental executive materials						
14. Draft and produce Investment Decision Guide and Fund Flyer						
15. Hold employee discussion forums						
16. Develop personalized statement*						
17. Hold planning meeting for 1998						

*More information about the personalized statement will come under separate cover.

MERCER FEES

Following are the estimated consulting, design, product development and project management costs for communication services based on Mercer's proposal to CIGNA. We have grouped our estimates into product categories for easy reference. Our invoices will follow this format and give you monthly as well as cumulative totals for each item, so that you always know where you stand against the approved budget. As we work with you to refine the communication strategy, we will keep you well informed of any fee revisions due to changes you've made in the scope of our services.

Our fees reflect *turnkey* services, with Mercer providing editorial and design support as a full-service communications agency. For written materials, we have assumed two edit rounds with CIGNA after the initial draft, plus a final review before press. Our fees include costs to oversee production of outside vendors. We will solicit vendor bids for video, printing and any other outside services, as directed by CIGNA at each project phase, once product specifications are well defined. These vendors will bill you directly, after Mercer reviews their invoices for accuracy. While we have working relationships with a number of printers and video producers whose quality we trust, we are happy to work with your vendors if you prefer.

This budget includes fees projected from September 1, 1997 through year-end 1998. After the first phase of the project (services in 1997), we will discuss any future services needed for communication in 1998 and provide an updated estimate. For 1997, if we were to provide all of the services itemized here, we estimate that Mercer fees (consulting, project management, writing, graphic design, etc.) for retirement communications would be $305,600 to $400,250, as detailed on the following pages. Administrative charges for clerical support, computer use and other administrative fees generally add about 10% to 15% to our monthly invoices. Travel will be itemized separately, at cost.

This is obviously a very large investment in communications, and many of our clients prioritize communications in this way in order to ensure the success of their program implementation. However, the more you can do internally, the lower our fees. This estimate, as you directed, assumes that Mercer will do most of the work—all drafting and production, with CIGNA doing some of the training. It also assumes a promotional quality to the communications, to produce high impact media. If your budget is more limited, we can partner with you to determine how best to develop the communications and training within the parameters and with the resources you have available.

827a

SUPPD1558

Estimated Fees

Project Components	Consulting (planning & writing)	Design Management (design & layout)	Production (production coord., proofing, peer review, communications, etc.)	Vendor	Total
Two all-day project team meetings *(with 3-4 of the Mercer team members; includes meeting preparation and follow-up)*	$20,000-$25,000	N/A	N/A	N/A	$20,000-$25,000
Ongoing Communication Consulting (1997) *Additional meetings; planning, strategic consulting; day-to-day coordination of all communication services, conference calls, team meetings, scheduling, proofing; etc.*	$25,000-$40,000	N/A	N/A	N/A	$25,000-$40,000
H.R. Bulletins (3) *2-4 page notices*	*per issue:* $2,500-$3,000	N/A	*per issue:* $500-$600		*Assuming 3:* $9,000-$10,800
Train-the-trainer program on retirement benefits *Mercer facilitation*	$20,000-$30,000	$4,000-$6,000 *slide preparation*	$1,500-$2,500		$25,500-$38,500
Implementation Guide for Employee Meeting Leaders *(includes employee meeting materials, with script, overheads, Q&As, plan details, guidelines, etc.)*	$25,000-$35,000	$3,500-$5,000	$1,000-$1,500	TBD	$29,500-$41,500
Executive presentation	$7,000-$8,000	$1,500-$2,000	$500-$750	TBD	$9,000-$10,750
Briefing Papers for Managers (2) 4-page "white papers"	*per issue:* $7,000-$9,000	*per issue:* $2,000-$2,500	*per issue:* $500-$750	TBD	*Assuming 2:* $19,000-$24,500
Employee Newsletters (3) *8-page news vehicles*	*per issue:* $9,000-$12,000	*per issue:* $4,000-$5,500	*per issue:* $1,000-$1,200	TBD	*Assuming 3:* $42,000-$56,100

Estimated Fees, con't.

Project Components	Consulting (planning & writing)	Design Management (design & layout)	Production (production coord., proofing, peer review, communications, etc.)	Vendor	Total
Plan Information Kit *(including brochure, beneficiary form, Q&A, etc.)*	$29,000-$35,000	$12,000-$15,000	$1,500-$2,000		$42,500-$52,000
Video Overview *(summary of program details on tape)*	$25,000-$28,000	$500-$1,000	$5,500-$6,600	TBD	$31,000-$35,600
Memos to Target Populations (4) *(e.g., cover letters for employee materials; target memo for Tier 1, etc.)*	*per letter:* $1,500-$2,000			TBD	*Assuming 4:* $6,000-$8,000
Investment Guide and Fund Performance Flyer	$30,000 - $36,000	$13,000 - $16,000	$2,500 - $3,000	TBD	$45,500 - $55,000
Feedback Device (1) *(brief survey, discussion outline for focus groups)*	$1,000-$1,800	$200-$300	$400-$500	TBD	*Assuming 1:* $1,600-$2,600
Personalized statement*	TBD	TBD	TBD	TBD	TBD
Supplemental Executive Communications**	TBD	TBD	TBD	TBD	TBD
Total* **	**$236,500-$309,800**	**$50,700-$66,800**	**$18,400-$23,650**	TBD	**$305,600-$400,250**

* *The personalized statement for 1998 will be quoted in a separate proposal to Dave Durham.*

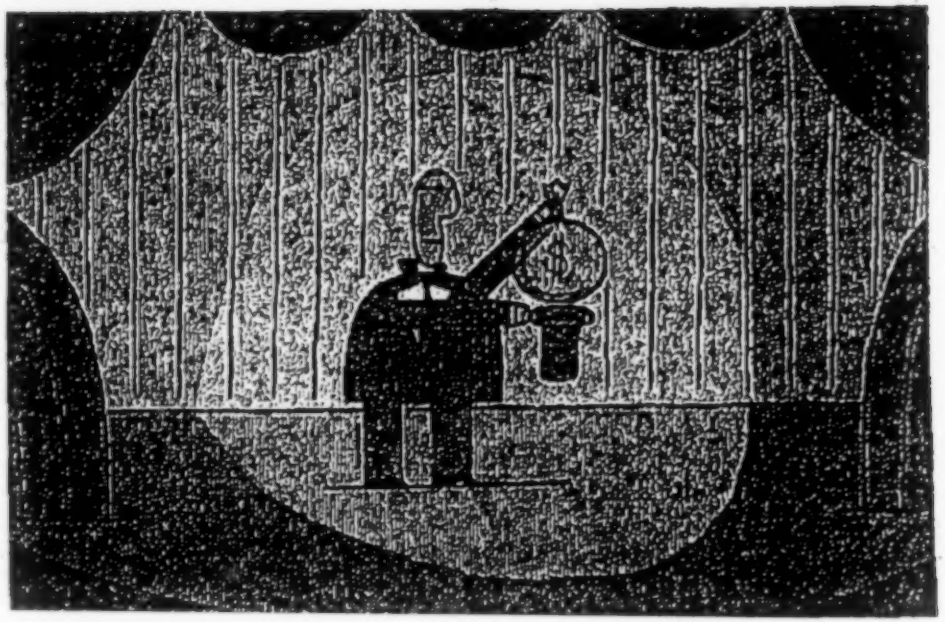
** *Other audiences—such as retirees, international assignees, executives, or others—may need special targeted communications. We can discuss this in our planning session and incorporate communications to these audiences, as needed.*

*** *All totals reflect production of multiple issues, as specified.*

Assumptions

- Travel expenses will be billed at cost.
- Administrative charges for clerical support, computer use and other administrative fees generally add 10%-13% to our monthly invoices.
- Shipping fees for large mailings will be itemized and billed at cost.
- Mercer will provide an initial draft of text for CIGNA's review, incorporate two edit rounds, and provide the final proof for approval to print. Additional text revisions will be billed at cost.
- Our design fees assume a user-friendly approach, with charts, graphs and some illustration.
- Vendor fees will be estimated once product specifications are defined. We will get bids for outside vendor fees, such as for printing and video production, as CIGNA directs. Mercer will review large vendor bills (for example, video production) for appropriateness and accuracy, and then send them to CIGNA for direct payment. If CIGNA wishes Mercer to pay the vendor bills and include these components on our invoices, there will be a 10% handling fee.

Our fees assume Mercer staff will do most of the work and communications will have a promotional quality.



THE MERCER ADVANTAGE
—a full service communications agency

For 30 years, Mercer's Communication Practice has been helping clients to communicate with their internal audiences through periods of change. We've worked with many Fortune 500 and smaller clients across industry to help them communicate to employees as key stakeholders in their enterprise. Besides being employee communication generalists, we specialize in communicating compensation and benefits, combining in-depth technical expertise with techniques for marketing and behavior modification. Our communication strategy and media are designed to provide the best possible solutions to meet your needs.

As we assemble our team, we have identified consultants and other staff with experience relevant to CIGNA's needs—people who have communicated cash balance and other retirement plans, including executive supplemental plans. We will also draw on the expertise of our retirement consultants Bob Aglira and John Gross, who have been assisting CIGNA in the analysis and feasibility of a cash balance approach.

All of our communication practitioners—whether project managers, writers or graphic designers—bring to each client engagement the perspective gained from having worked with a variety of other clients on many types of communications. In the recent past, the communication consultants assigned to your team have effectively communicated cash balance plans in companies as diverse as Duke Energy, Lifespan (health care system), BellAtlantic and Houghton Mifflin. We also have extensive experience in helping other firms in the financial services industries with a variety of communications—such as Aetna, Northern Trust, State Street Bank and Putnam. We will draw on this broad, diverse and related experience to develop the right solutions for CIGNA.

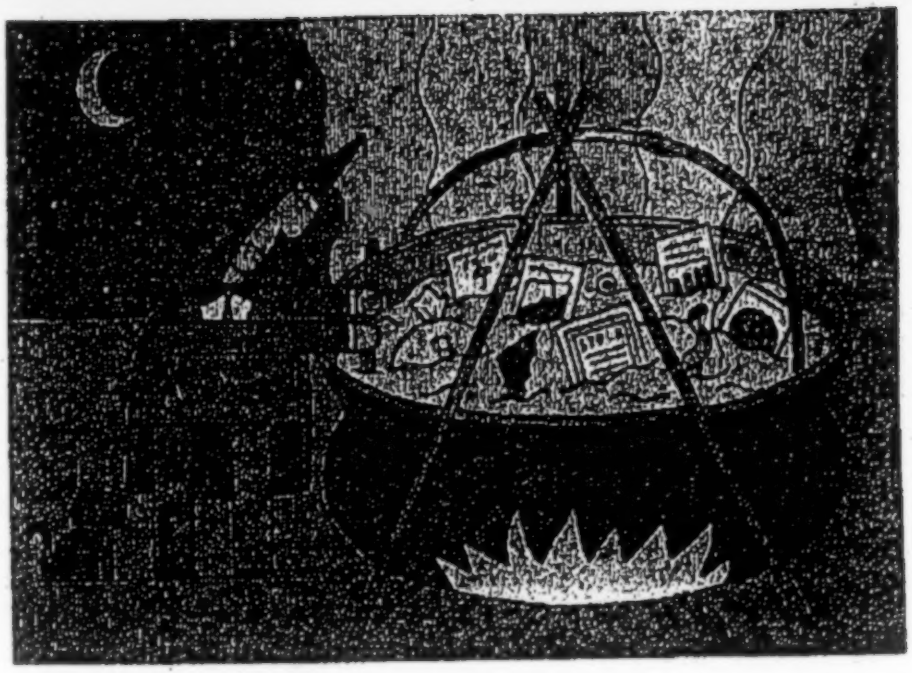
To work effectively with large clients on large projects, we have developed a special approach. We have organized our communications practice as a full-service communication agency providing *turnkey* services. Our competencies include best-practice consulting, promotional and technical writing, brand identity development and other graphic and layout services, intranet and other personalized communications technology.

BEST AVAILABLE COPY

Lea Peterson, who heads the Boston communication practice, would be CIGNA's senior communication consultant, advising on process and media solutions, consensus building and best practices, and working with your internal management or committees. We will also assign a communication project manager to oversee the Mercer team and direct all media development, including writing and design. In addition, this individual will develop and manage all production schedules to assure that our team produces all deliverables on time. A writer with experience in communicating cash balance plans and another who specializes in executive supplemental plans will work together to draft media. Other support staff on the team will include a graphics designer and video director.

At the time you decide you want to work with us, we will make final decisions about team make-up to accommodate the services and timeframes you establish. We will introduce our team in the project planning meeting. The resume of your lead consultant is on the next page.

We are a full-service communications agency providing turnkey services.



CIGNA will get high quality and creativity because of our strong team approach. We pride ourselves not only on delivering superior communication solutions, but also on our working relationships with clients. We will work with you in the way that's easiest for you—via phone, E-mail or personal contact, so that the process is as satisfying as the product. *In fact, many of our clients feel that our team and theirs are seamless—there is one team, not two.*

Resume—Lea Peterson

Lea Peterson is a Principal in Mercer's Boston Office and leads the Boston communications practice. She works with clients of all sizes during periods of major organizational change. Her work includes program planning and strategy; employee research; implementation of specific programs, such as cash balance plans; communication during and after mergers, acquisitions, divestitures, layoffs and reengineering; union education; and supervisory training.

Lea has worked with numerous clients to help them improve communications to employees as they realign their organization, shift their business direction or make program changes. Over the last two years, she has helped Duke Power with communications and change management issues related to the benefit program introduction, and has supervised the development and production of all communications. Other current clients include Aetna, Corning, Beth Israel Deaconess, Analog Devices, EMC, and the J. Paul Getty Trust.

Professional Experience

Lea has over 25 years' experience in organizational communications. Prior to joining Mercer, she was responsible for Digital Equipment Corporation's international benefit and compensation communication and training programs, and managed Digital's North American employee communications function. She has also worked in public relations at Raytheon Company and in investor relations at Cabot Corporation, and has taught English in several school systems.

On seven occasions, she has received a Gold Quill for client work; this award is given by the International Association of Business Communicators for excellence in communications. In 1997, she and her partners at Duke Power were awarded a Gold Quill for change communications. Lea's other awards have been for strategic employee communication; an employee attitude survey; introduction of a major benefit program change; two compensation communication programs; and communication of downsizing and reorganization.

Education

Lea graduated Magna Cum Laude, Phi Beta Kappa, with a Bachelor's degree in English from the University of Maryland, and Summa Cum Laude with a Master's degree in English from the University of New Hampshire.

Note: Resumes for other team members will be provided as we plan for the project kick-off meeting.

10-18-07

Arko, John G TL17B

From: Beltz, Stew M TL17B
To: Arko, John G TL17B
Cc: Pepper, Hildy R TL17B
Subject: FW: Retirement Communications
Date: Tuesday, September 16, 1997 1:26PM

John,
Thanks for sharing. I thought we had the SIP Prospectus going out 10/8 to 10/15 in advance of ALL communications? That was the information that I reported at the meeting on Friday and recorded in my notes. In addition, the calendar that Hildy just distributed shows the same thing. Will you confirm with Hildy and then follow up with DWD to amend his calendar?
Thanks, Stew

From: Arko, John G TL17B
To: Pepper, Hildy R TL17B; Beltz, Stew M TL17B
Subject: FW: Retirement Communications
Date: Tuesday, September 16, 1997 9:37AM

FYI-
JohnA.

From: Durham, David W OL53A
To: Brawley, Charles A OL52A; Gontarek, Paul J OLP
Cc: Czaklosz, Ania L TL17B; Mazzoni, Jacqueline TL17E; Wildfeuer, David M TL17F; Barker, Betty B TL42B; Arko, John G TL17B
Subject: Retirement Communications
Date: Saturday, September 13, 1997 1:38PM

[[PENCOM5 : 3333 in PENCOM5.]]Here is the first draft of a communications timeline based on our meeting with Mercer on Friday. The Target Dates are anticipated delivery dates to employees.

We continue to focus on NOT providing employees before and after samples of the Pension Plan changes. We will focus on their need to project retirement income needs (with our help), anticipate SS benefits (with our help) and ultimately in the Total Compensation Report we can offer advice on a reasonable level of savings they need to consider in addition to the Pension benefits CIGNA will provide (as shown in detail in the TCR).

We will need to resolve ASAP the counseling support internal to HR &S. We anticipate having Q & As prepared for Counselors in October and will need to consider E-mail capabilities to disseminate answers to actual questions employees are asking Counselors to ensure consistent messages are given to employees.

Thanks.

APPEALS/COMPLAINTS
Tracking Form

- ☐ Appeal
- ☐ Complaint
- ☒ Inquiry/Request

Employee: Biggs, Nancy JJ

Social Security Number: NA

Date received: 1.21.2000

Acknowledgement letter sent: NA

Staff handling appeal: A-KD

Type of Appeal

- ☐ Dental
- ☐ Disability - STD or LTD
- ☐ 401(k)
- ☐ Medical
- ☒ Pension
- ☐ Reimbursement Account - HC or DC
- ☐ Retiree Healthcare
- ☐ Other _____

Specific Issue

New plan inquiry-CB

30-day extension needed?

Yes No **Extension letter sent on:** _____

Summary (to be completed by staff who handled appeal)

Wants comparison/projection of old/new benefits. D told her we don't do. She can call CBIS for new plan projection.

Were extra-contractual arrangements made? Yes No
If yes, please summarize on reverse

Final response letter sent on: 2/4 2000.1

- ☐ Approved
- ☐ Denied
- ☒ N/A

☐ Appeal closed - OK to file

I:\appeals\form.doc 06.30.99

EXHIBIT 66 KD 7-3-03

D020529

Arko, John G TL17B

From:	Biggs, Naomi Esq. TL21A
Sent:	Friday, January 21, 2000 6:28 PM
To:	Arko, John G TL17B
Subject:	CIGNA's new pension plan
Importance:	High
Sensitivity:	Confidential

John,

I hope you will be able to help me. When the new pension plan was first announced, I was very upset and tried to obtain answers to my questions, in particular, a comparison of the prior plan and the new plan. I needed this for retirement planning purposes. I was told that employees would NOT be provided such a comparison. Of course, this lack of information heightened my concerns. Recently, I learned through a colleague that, indeed, upon request, a comparison will be provided.

I would greatly appreciate your cooperation in providing me with a comparison of what I would have been provided under the former plan as compared to what I will be provided under the new plan. Please do not include the 401(k) in the analysis of the new plan. I'm interested strictly in the pension aspect.

I am one of those employees who was told that the new plan would not be advantageous and that I would receive a "boost" in my opening balance to compensate. I am an "older" employee who has been with CIGNA since Jan. 1991.

After I receive the comparison, I would also appreciate an opportunity to meet with you for further explanation. I'm concerned that I may not fully understand the calculations and do not want to incur the fees of hiring an advisor.

Thanks very much for your help. Please let me know at your earliest convenience if you need additional information from me in order to prepare the comparison.

Naomi Biggs, Sr. Counsel
Group Insurance Law Dept. TL 21A
215.761.2007

☒ call - 1/28 left msg - call me back / call OBS for projection

☒ let they know outcome - he may want to call.

- 2/4 spoke w/ Naomi general concepts on why she's not "lost benefits" (cuz no wear-away) - revisit your OAB [illegible] to see
No - we don't do comparisons.
Yes - call OBS for a projection of current plan
Why don't we have issues like IBM - cuz no wear away
She "came to retire at 55".

To: Pension Plan File

Arko, John G TL17B

From:	Beltz, Stew M TL17B
Sent:	Tuesday, March 20, 2001 2:14 PM
To:	Parker, Donna D H18B; Hodges, Andy B H18B; Steele, Robert W H20A
Cc:	Arko, John G TL17B; Lau, Sandra H TL17B; Meyn, Gerald T TL17M; Durham, David W TL17M; Gontarek, Paul J TL48E
Subject:	Non-standard Pension Calculation Requests

Donna, Andy, and Bob,

In follow-up to my call today, I want reinforce the process that John Arko has laid out for fulfilling any "non-standard" pension benefit calculation requested by pension plan participants.

Specifically, please do not conduct any calculation for pension benefits for a plan in which the employee, or any former employee, is not an eligible participant. Please adhere to all established, and reasonable assumptions for completing calculations for eligible pension plan participants. In the event of a prospective new-hire or the re-hire of a former employee with a vested or unvested benefit, only conduct a pension calculation for the specific plan they would be eligible for. Please do not perform any "hypothetical" or "what if" calculations for any pension benefit accruals for which the employee is not currently or could not in the future be an eligible plan participant. If a participant has a frozen pension benefit, please do not conduct any pension calculation that projects future growth in any frozen benefit.

Any attempt to request a "hypothetical", "what if" or any other non-standard pension calculation must be directed to John Arko or myself for prior approval, consistent with the process currently in place for all executive requests. Please instruct a participant to contact John Arko or myself in writing to appeal this policy. For additional documentation of the process I am describing, please refer to John Arko's, January 22, 1999 memorandum entitled, "CIGNA Supplemental Pension Plan & Special Pension Agreements - Workflow". For ongoing guidance, please continue to work directly with John Arko.

Please share this information with other members of the retirement benefits service team who may be involved in pension calculations and pension calculation requests. Thank you.

Stew Beltz
AVP, Plan Administrator
Employee Benefits
CIGNA Corporation, TL17B
PO Box 7716
Philadelphia, PA 19192-2371
215.761.4601 tel
215.761.5510 fax
Stew.Beltz@CIGNA.com

Arko, John G TL17B

T & R/E: Pension

From: Meyn, Gerald T TL17M
Sent: Monday, March 13, 2000 4:07 PM
To: Fernandez, Michael A OL55E
Cc: Levinson, Donald M OL55C; Hill, Denise TL17L
Subject: Contingency Plan - Cash Balance

Mike:
Would you please review the materials we have assembled to use in case of a media challenge to our cash balance pension plan? Our Jan 1998 introduction of the plan did not set off any significant rumblings at CIGNA, and things remain quiet. The fact that we retained all long service employees in the prior final pay annuity plan is an important reason for this positive outcome.

Here are the materials which would be sent to employees soon after any negative press for CIGNA on this topic.

Meyn Letter draft.doc Fact Sheet.doc QAPP.doc

Regards,
Jerry

Gerald T. Meyn
Vice President
Employee Benefits & Health Management

draft 3/13/2000
Items in italics will be modified to fit specific circumstances. The remainder of the letter and attachments should fit most situations.

Routing TL17A
Two Liberty Place
Philadelphia PA 19192
Telephone 215.761.2729
Facsimile 215.761.5524
GERALD.MEYN@CIGNA.COM

Dear CIGNA Employee:

You may have seen the attached article from [*today's Wall Street Journal*] in which CIGNA is referenced. The writer questions [*whether today's employers are paying their fair share of retirement benefit costs*] and specifically points to "cash balance" pension plans as part of the problem. As you know, CIGNA introduced a new account balance plan, which is a type of "cash balance" plan, on January 1, 1998.

Let me restate our objectives for introducing the new CIGNA Pension Plan, which are to:

- deliver adequate retirement income to CIGNA employees,
- improve the competitiveness of our benefits program and thus our ability to attract and retain top talent,
- meet the changing needs of a more mobile employee workforce, and
- provide retirement benefits in a form that people can understand.

CIGNA has not reduced the overall amount it contributes for retirement benefits by introducing the new Plan, and the Plan is not designed to save money.

CIGNA's Retirement Program, which includes both the Pension Plan and the 401(k) Plan, is an important part of the company's commitment to helping you build a significant source of income for your retirement years.

I have attached a Fact Sheet and Questions and Answers. For more information, you may also:

- Access the intranet, CIGNA Central, at: http://home.cigna.com/cigandu/benefits/pensQA.html.
- Refer to Section H of your Signature Benefits binder. A summary plan description insert of the new Pension Plan was recently distributed to all eligible employees.
- Call Signature Benefits Services at Network 761.3539. Benefits Counselors are available Monday through Friday, 8:00am to 5:00pm Eastern time.

Sincerely,

Gerald T. Meyn
Vice President, Employee Benefits & Health Management

The CIGNA Pension Plan
Fact Sheet

- The Pension Plan is an important part of CIGNA's Retirement Program. On January 1, 1998, CIGNA introduced a new Pension Plan replacing the old one.

- Our current Pension Plan is a relatively new type of plan, generically known as a "cash balance" plan. We more accurately refer to our plan as an "account balance" plan. With this type of plan, a specific amount is credited to a pension account for employees periodically; it is similar to a savings plan. The best part is that CIGNA does the saving for you. You make no contributions of your own to the Plan. As your age, company service and pay increase, the dollar amounts credited to your account increase as well.

- CIGNA adopted an account balance type plan to:
  - deliver adequate retirement income to CIGNA employees;
  - improve the competitiveness of our benefits program and thus our ability to attract and retain top talent;
  - meet the changing needs of a more mobile employee workforce; and
  - provide retirement benefits in a form that people can understand.

- Through this Plan, CIGNA is not reducing the overall amount it contributes for retirement benefits, nor has the new program been designed to save money.

- Compared with traditional pension plans, our new account balance pension plan generally tends to provide larger benefits for shorter-service employees and comparable benefits for longer-service employees.

- Some other advantages of this type of plan are:
  1) It is easy to understand because contributions are credited to an account, like a savings plan;
  2) You receive regular account statements, so you know exactly how much your benefit is growing; and
  3) You can take it with you if you leave CIGNA (once vested after five years).

- In addition, CIGNA makes all the contributions and bears all the investment responsibility and investment risk; you can't have an investment loss. Your benefits are insured (up to certain amounts) by the government-sponsored Pension Benefit Guaranty Corporation.

Pension Plan Q&As

Q. What is a "cash balance" Pension Plan?

A. "Cash balance" is a generic term for a relatively new type of pension plan. We more accurately refer to our "cash balance" pension plan as an "account balance" plan. With this type of plan, a specific amount is credited to a pension account for you periodically – similar to a savings plan. The best part is CIGNA does the saving for you. You make no contributions of your own to the Plan. As you age, company service and pay increase, the dollar amounts credited to your account increase as well.

You receive quarterly statements of your Pension Plan account balance so you can see that amount continue to grow every year you are with CIGNA. Once you have five years of service, you'll be eligible to receive pension benefits when you leave – that is, you'll be vested in your plan account.

Q. Why did CIGNA change the retirement program?
A. There are several reasons for the change:
We wanted to improve the competitiveness of our benefits program and thus our ability to attract and retain top talent. The enhancements to the plans make our retirement program more competitive with those offered by other companies in our industry. Many companies already have moved to account balance retirement plans, and a large number of others are headed in that direction. The changes help us attract and retain employees in a marketplace that is getting more and more competitive.

We wanted to meet the changing needs of a more mobile employee workforce. The new Pension Plan provides more portable retirement benefits. If you leave the company before retirement you can take your benefits with you (as long as you are vested after five years). In addition, benefits will grow faster during the early part of your career. This helps you earn a fair benefit from the plan, whether you work here five years or 20.

We wanted to provide retirement benefits in a form that people can understand. The new Pension Plan is far easier to understand than the old Pension Plan. Just as important, it coordinates well with the 401(k) Plan, so that you can easily understand your total retirement package, monitor its growth and plan for your future financial security.

Q. How much money is CIGNA saving with these changes?
A. None. CIGNA has *not* reduced the overall amount it contributes for retirement benefits, nor has the new program been designed to save money. The company had a different set of objectives, including competitiveness, flexibility and simplicity.

Q. Did some employees stay in the old Pension Plan?
A. Yes. Employees who were hired before 1989, who were not in a CIGNA HealthCare division healthplan company, and whose age and service totaled at least 45 years remained in the old Pension Plan. There are several reasons why these employees stayed in the current plan. First, over the many years they have worked at CIGNA, these employees -- many of whom are close to retirement eligibility - have earned substantial benefits under the old Pension Plan. Second, these employees are entering the career stage in which the old Pension Plan provides the highest growth in benefits. These employees couldn't match this benefit growth under the new plan. Third, these employees have based their financial and retirement planning on the assumption that they will continue to earn benefits under the CIGNA Pension Plan. Changing their retirement plan could disrupt their financial plans, possibly leaving them without enough time before retirement to recover from this disruption. To be fair, we maintained these employees in the old plan.

Q. Do I have to contribute to the Pension Plan?
A. No. CIGNA makes all contributions to the new Plan, as it did with the old Plan. If you want to save for retirement, while earning additional company matching contributions, however, the 401(k) Plan allows you to contribute up to 16 percent of your pay through payroll deductions (subject to certain limits if you are a highly compensated employee).

Q. How do I earn benefits under the new Pension Plan?
A. Each year, you earn *benefit credits* under the new Plan based on your age, eligible earnings and service with the company. These benefit credits are allocated to your plan account and range from 3 percent to 8.5 percent of your eligible earnings. The company also credits your account with interest credits. The annual interest rate varies from 4.5 percent to 9 percent, depending on the recent five-year Treasury Bond yields.

Q. The new Pension Plan looks a lot like the 401(k) Plan. Why didn't CIGNA just put the money into the 401(k) Plan?
A. There are some similarities between the Pension Plan and the 401(k) Plan, but there also are some important differences. A key difference between the Plans is that the benefits you earn under the new Pension Plan are more secure. Unlike your 401(k) Plan, you cannot have and investment loss in your Pension Plan account. Also, Pension Plan benefits are insured (up to certain amounts) by the government-sponsored Pension Benefit Guaranty Corporation. Providing you with a secure retirement benefit at company expense is an essential part of the total compensation package we offer in return for your work contributions. A plan like the 401(k) Plan provides many benefits as well, including the opportunity for larger investment gains. But your 401(k) account balance also is exposed to investment risk and is not guaranteed by either the company or the government.

Q. In the 401(k) Plan, I can choose how to invest my funds. Why can't I do the same in the new Pension Plan?
A. Your Pension Plan account is a bookkeeping account only. The benefit and interest credits added to it measure the amount owed to you by the plan but do not represent actual assets set aside to fund your benefit. Instead, all Plan benefits are paid out of a single pension fund, which is managed and invested by the pension trustee. Funding

your benefit in this way is more secure for two reasons. First, CIGNA bears all the investment responsibility and investment risk. You cannot have and investment loss as you might in a plan like your 401(k), where assets are added to an account that you manage and invest yourself. Second, this funding method allows Pension Plan benefits to be insured (up to certain amounts) by the Pension Benefit Guaranty Corporation. This creates additional security for your benefits, which could not be realized in a 401(k) plan.

Q. Will my benefit be better under the new Pension Plan?

A. The new Pension Plan is different from the old Pension Plan, so exact comparisons of benefits that cover all possible outcomes are difficult. Generally, the new Pension Plan, compared with the old Pension Plan, tends to provide larger benefits for shorter-service employees and comparable benefits for longer-service employees.

Of course, other features of the new Plan also add to your benefit value. The lump sum distribution option can be very valuable, since it allows you to move your benefits into other tax-deferred investments after you retire or leave CIGNA. Also, because the new Pension Plan works like a savings plan, with contributions credited to an account, you should find it easier to understand. You now have two plans that are account-based, enabling you to track your retirement benefits by looking at your statements. As a result, you will see the growth in your total retirement benefits from CIGNA every year and will be able to update your financial plans accordingly.

July 25, 1997

To: Jerry Meyn
Demise Hill

From: David Durham

Re: Revised Discussion Points with Division Presidents

I have revised the discussion points to focus on some of the key questions the Presidents will have about the program changes including impact on employees, future hiring capability, and the overall execution of the communications process.

I would like your comments by Wednesday, July 30. In the meantime, I will set time with a small group of managers to get their input on the discussion approach and the proposed communications, and to determine if they have other questions which we should anticipate for any future discussions with senior managers.

I appreciate your input.

Not a handout - discussion items

Scope:
1. Fundamental change in the distribution of pension benefits for most employees
2. Introduction of enhancements in SIP geared to corporate performance
3. Combined changes result in no added expense to divisions - - although some variation will be likely in future
4. Designed to "jump start" a change in culture but limit disruptions

Purpose:
1. We fall short 6% - 8% from median value of competitive plans
2. Employee perceptions gathered from focus groups place an even lower value on the the current program
3. Create a more direct link between effort and reward - guarantees and upside potential
4. Continue rewards for staying with CIGNA - - but no "handcuffs"
5. Introduce more flexibility

Details: See two charts that will be distributed for detailed discussion of changes

Impact on Current Employees:

1. NO negative impact on most employees with long service or near retirement (80% of retirees within 10 years are in Tier 1)
2. Improved benefits for about 900 employees in Tier 1 with CB
3. Equitable : Special transitions for Tier 2
4. Short term impact is very positive - - higher average benefits for all
5. Long-term impact - potentially same or more but dependent on profitability measures, personal savings / investment
6. Far more flexibility / ownership of retirement resources
7. Provide several examples of impact from bar graphs

Impact on Hiring and Retention:

1. Focus Group Activitiy/ Personal Interviews : Report that Pension + 401 (k) are considered in the compensation package
2. Potential improvement in attracting the right talent particularly in the P & C/Health Care markets where these plans are most common
3. Potentially less pressure on salary package in future
4. Perception of 401(k) Match improves perceived value of compensation package
5. Retention should not be reduced generally since program still incents longer service ; retention of "right" people may actually improve as marginal performers see no "cliffs" to await

Division Perspective:

1. Elicit concerns over changes - - population segments/ geographics areas that are critical to division
2. Discuss how division can support changes - - communicate, tie to business plan

Employee Perception:

1. Must manage disbelief in the benefits from the new deal
2. Educate about total program - CIGNA and Employee Roles going forward
3. Make sure each audience knows what arrangements are being made for the other group (Tier 1 -2) to heighten awareness of equity in the package
4. Quickly dispel perceptions of "take aways" - focus on the potential additional benefits
5. Manage expectation of the size of 1/98 Pension Account
6. Develop support lines (written and telephonic) - - tie to divisional management support

Critical Messages:

1. Pension + SIP are an integrated program
2. Pension + SIP are much alike - - but with some differences
3. Pension = guarantees ; SIP has guarantees + upside potential
4. Employee has a responsibility to ensure adequate retirement income
5. Portability / Ownership
6. Investment Education

Your Concerns :

1. What are the special messages you want to get across ?
2. Which are you key audiences that need to understand the changes and can advocate the changes?

Communication Process:

1. Show proposed timetable / get input

Beyond 1/1/98:

1. Divisional responsibility to tie into business plans and discussions
2. Expanded investment education
3. Expanded profit sharing / stock purchase plans - - tied to expanding restricted stock through the organization

cbdiv2

Retirement Program Changes

- Scope
- Purpose
- Details of Changes
- Impact on Current Employees
- Impact on Hiring and Retention
- Your Division's Perspectives
- Employee Perception
- Critical Messages
- Your Concerns
- Communications Process

RETIREMENT PROGRAM CHANGES

- Effective January 1998
- SIP Changes - - Limited to Participants but can be expanded
- Discretionary Match
  - CIGNA Stock
  - Additional Funds
  - 1-year waiting period until 1999
- Pension Changes - - Affect Most Employees
  - 2 % Pension Plan continues
  - Hired Before 1989 - - "Under 45" rule
  - Hired after 1988
  - Excludes Healthsource
  - Special Transition - - "Under 56" rule

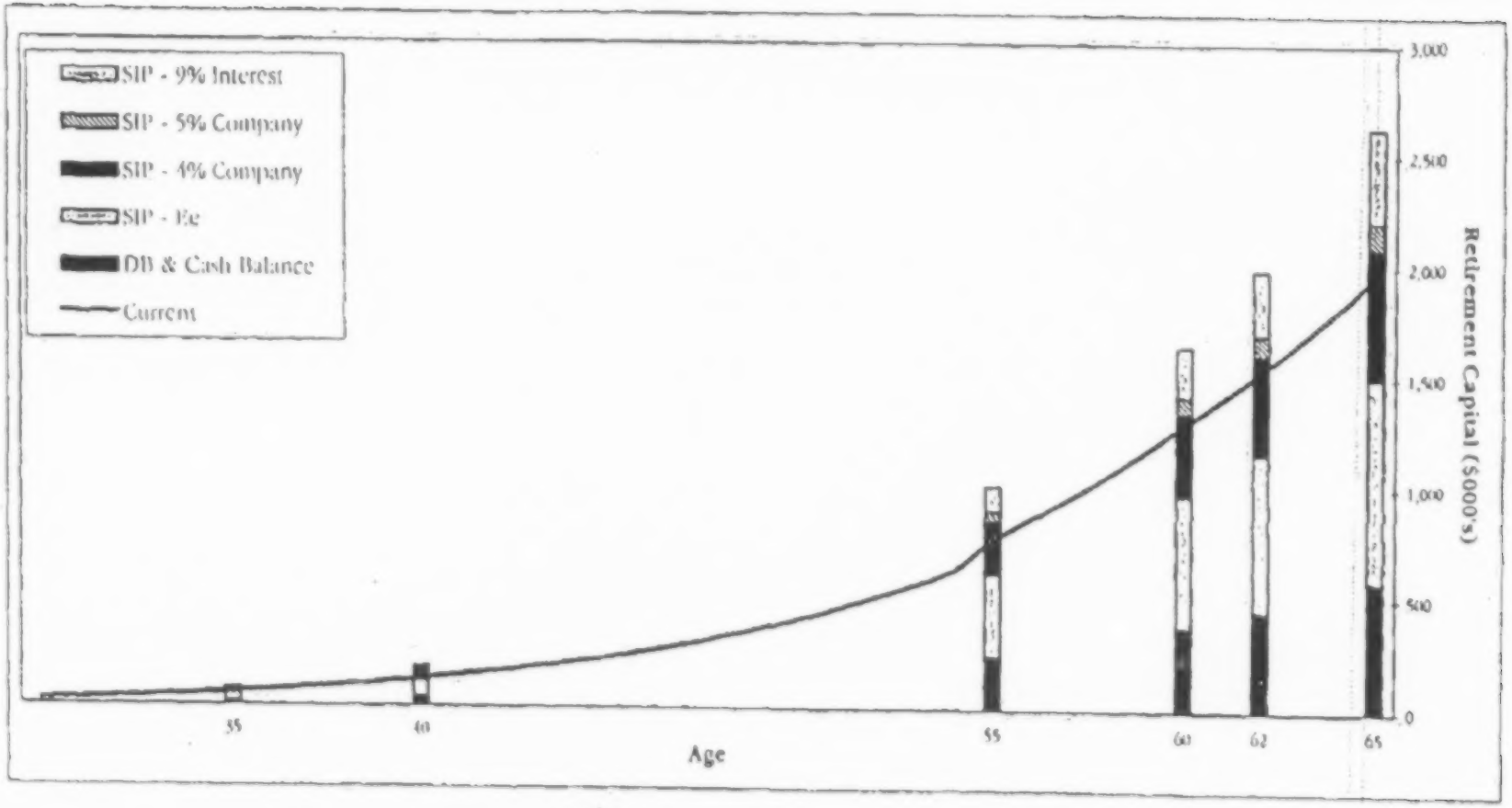
RETIREMENT PROGRAM CHANGES

- Initial Conversion in 1st Quarter 1998
  - 12/31/97 Benefit payable at age 65
  - Age + Service of 55 = age 62 value + favorable interest rates
  - Preserve all special features
- Benefit Credits

Age + Service	Annual Allocation	
	Earnings to $34,000	Excess $34,000
Under 35	3 %	4.5 %
35 to 44	4 %	5.5 %
45 to 54	5 %	6.5 %
55 to 64	6 %	7.5 %
65 or over	7 %	8.5 %

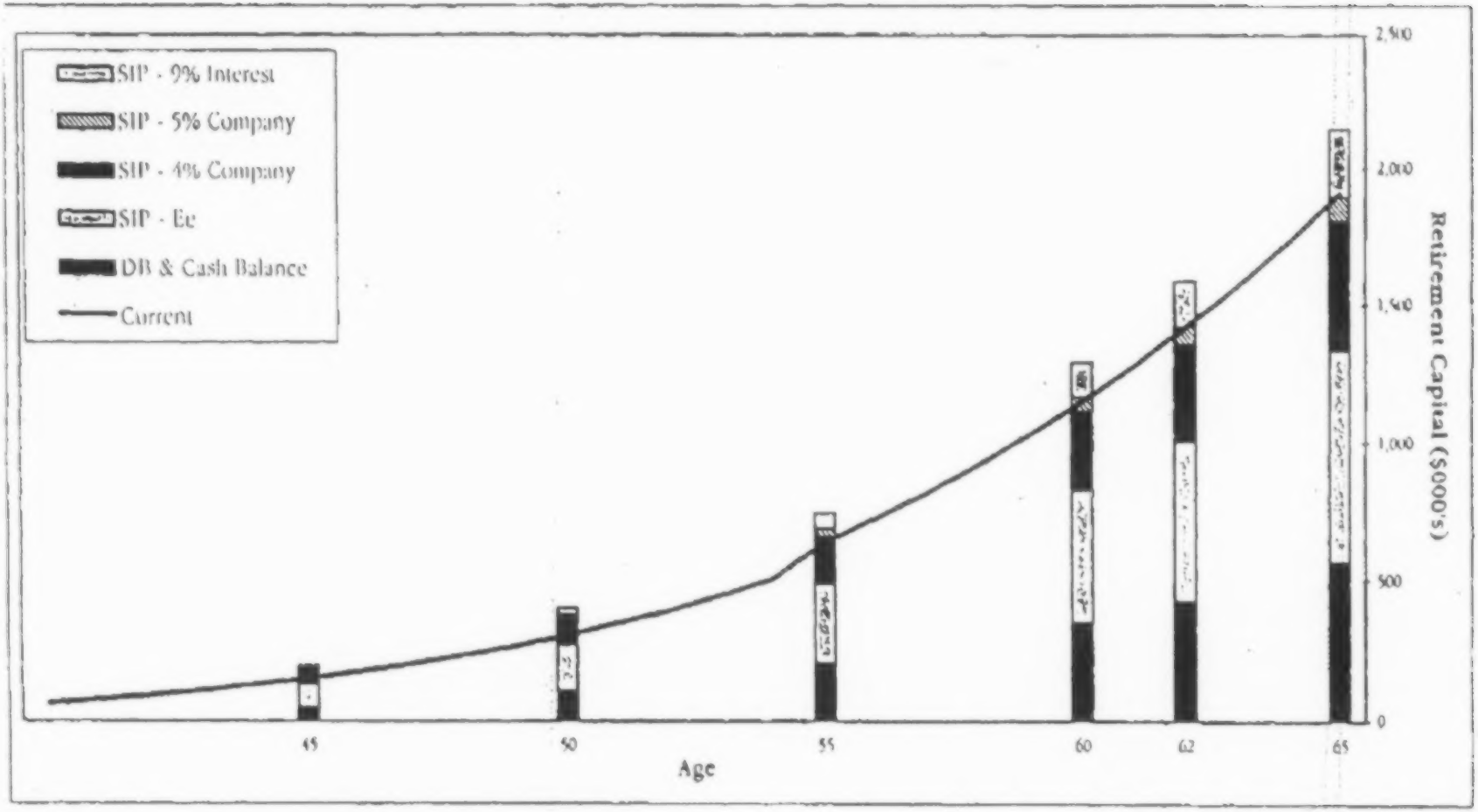
- Interest Credits - - 5-year Treasuries
- Quarterly Allocations and Statements
- Portable - Lump sum

Proposed Program vs. Current Program



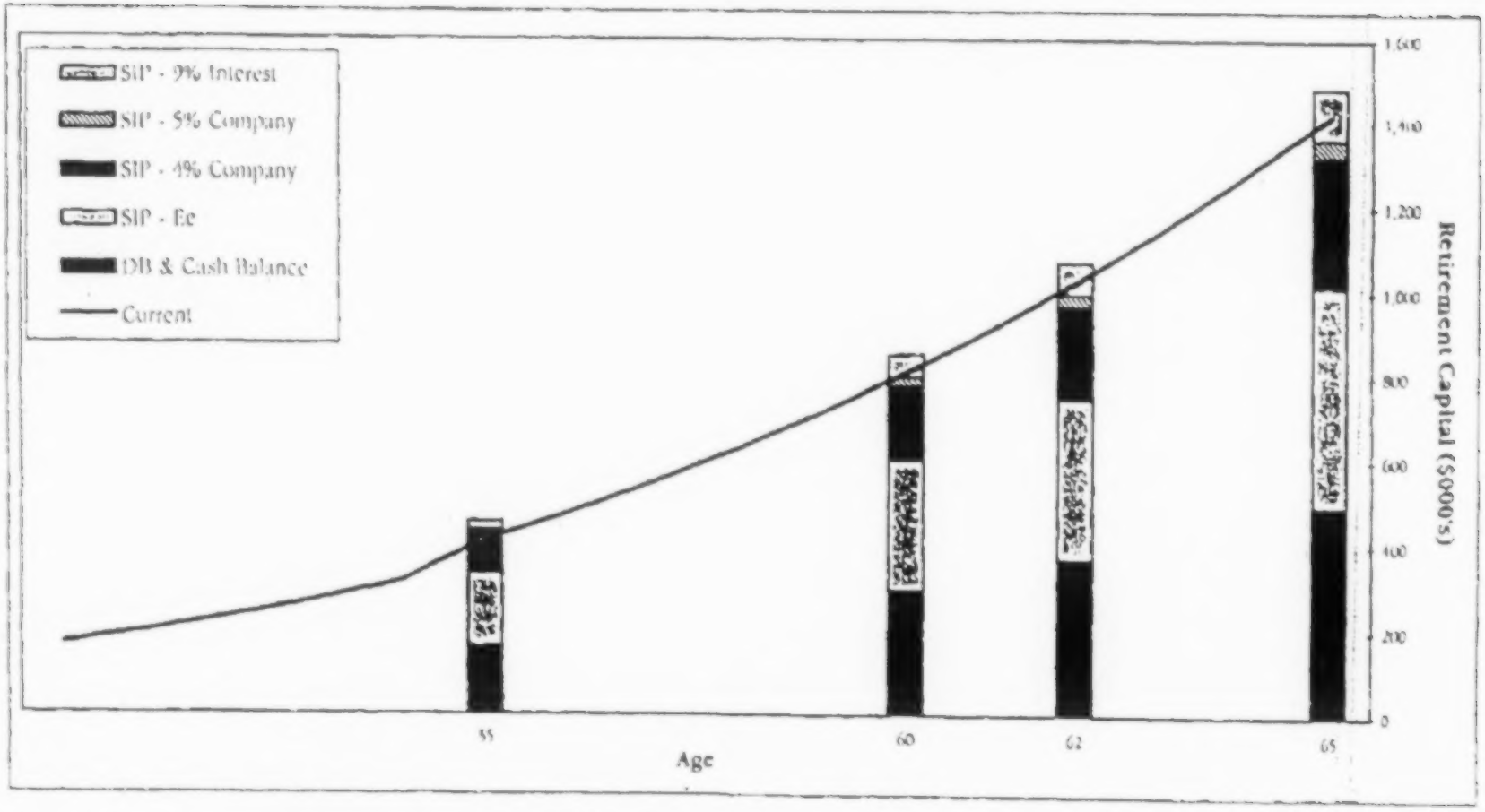
Employee Type	Tier2	**Current Age**	30
Proposed DB	Integrated CB Plan	**Current Service**	5
Proposed DC	4% Match	**Starting Comp.**	35,000
Transition	No	**Ee Savings Rate**	6.0% (8.0% Interest)

Proposed Program vs. Current Program



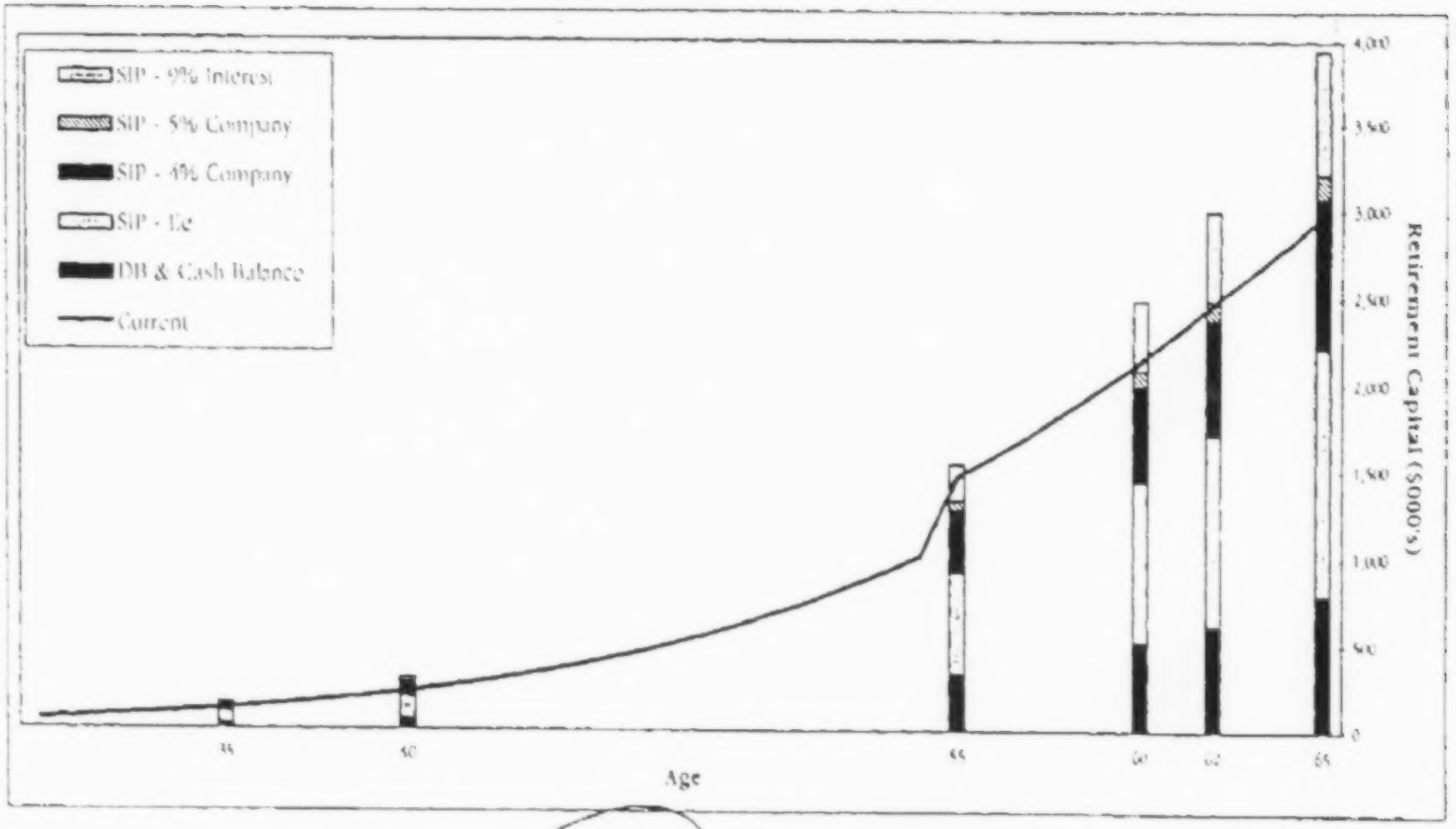
Employee Type	Tier2	**Current Age**	40
Proposed DB	Integrated CB Plan	**Current Service**	7
Proposed DC	4% Match	**Starting Comp.**	60,000
Transition	No	**Ee Savings Rate**	6.0% (8.0% Interest)

Proposed Program vs. Current Program



Employee Type	Tier2	**Current Age**	50
Proposed DB	Integrated CB Plan	**Current Service**	10
Proposed DC	4% Match	**Starting Comp.**	80,000
Transition	Yes	**Ee Savings Rate**	6.0% (8.0% Interest)

Proposed Program vs. Current Program



Employee Type	Tier 1
Proposed DB	Integrated CB Plan
Proposed DC	4% Match
Transition	No

Current Age	30
Current Service	10
Starting Comp.	$5,000
Ee Savings Rate	6.0% (8.0% Interest)

RETIREMENT PROGRAM COMMUNICATIONS

Timeframe	Media	Audience
September 22	Letters Q & As	Human Resources
October 6	Letters Q & As	Managers
October 27	Newsletter - Plan Overview and Timeframes	All Employees
November/ December	Divisional Meetings - - Connect with Business Plan Discussions	All Employees
November 3	Newsletter - SIP Details	All Employees
November 15	Additional Q & As as needed	Managers / HR
December 1	Newsletter - Pension Details	All Employees
January 12 '98	Newsletter - Pension Details	All Employees
February 13	Newsletter - Total Compensation Report Overview	All Employees

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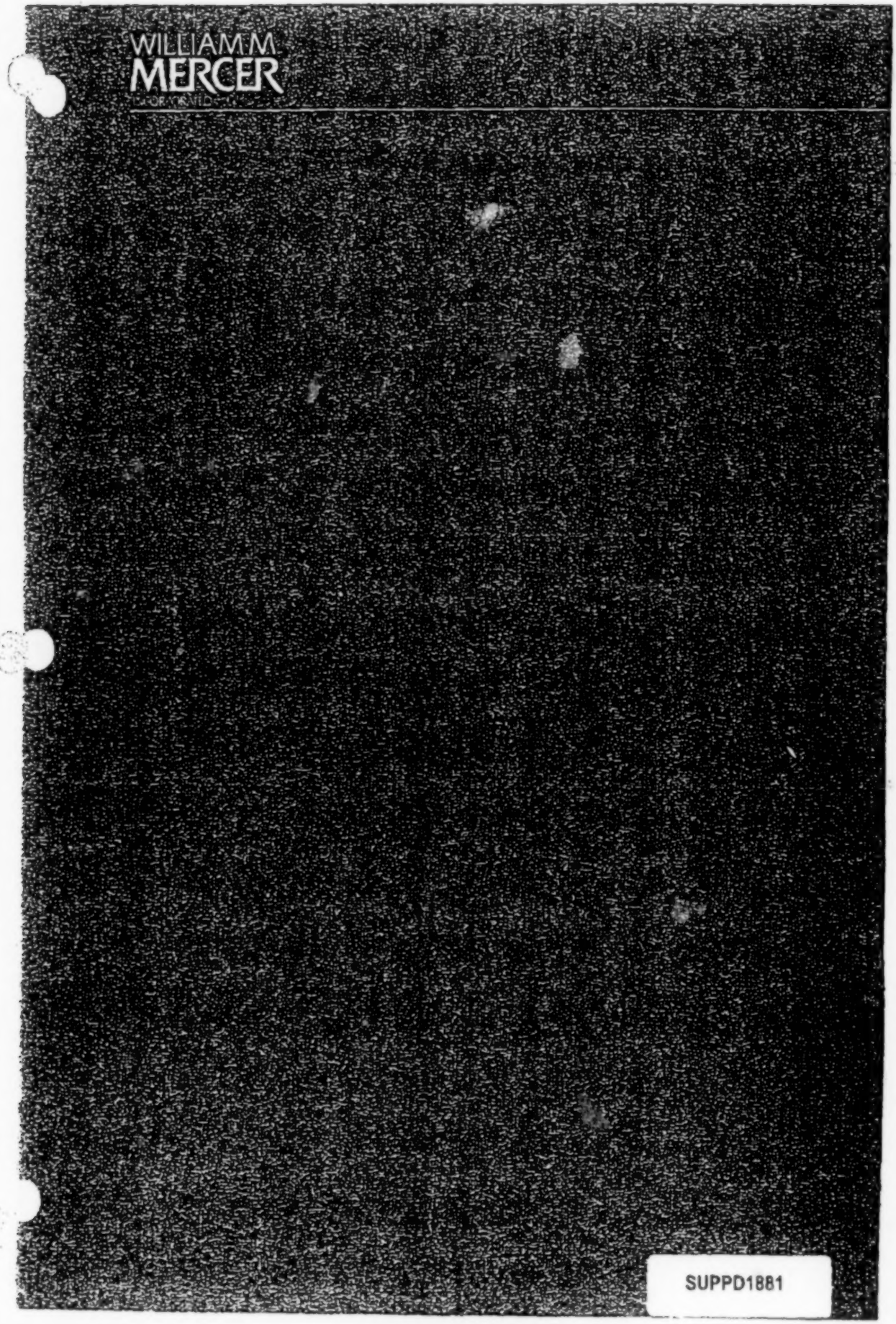
RETIREMENT PROGRAM COMMUNICATIONS

Timeframe	Media	Audience
March 20	Newsletter - Focus on Investing	All Employees
March 27	Pension/ SIP Booklets	All Employees
April 10	Total Compensation Reports - Personalized Details	All Employees
April 20	CEO Letter on SIP Match	All Employees
April / June	Meetings in most locations	All Employees
May	CEO discusses results	All Employees
June	SIP Enrollment Meetings	Locations with low participation
October 29	CEO discusses results	All Employees
April 10 '99	SIP Award Announcement	All Employees
May 1	SIP Award deposited	All SIP Participants

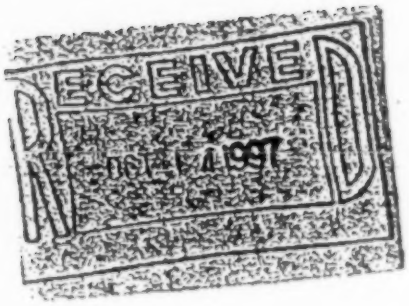


BEST AVAILABLE COPY

CIGNA
Project Planning Meeting
Friday, September 12, 1997

Agenda

9:00-9:15 a.m.	*Team introductions and staff roles*
9:15-12:00 noon	*Review and confirm communication strategy*
(including 15-minute break)	▪ Objectives
	▪ Measures of success
	▪ Audiences
	– Issues, needs, roles, key messages, impact
	▪ Employee actions required
	▪ Overview of media components
	▪ Mercer and CIGNA roles
12:00-12:45 p.m.	LUNCH
12:45-2:45	*Staging of messages in key media*
	▪ Advance communication to managers
	▪ Letter to Tier 1 employees
	▪ Newsletters #1 and #2
	▪ Information kit
	▪ Other components
2:45-3:15	*Graphic design standards and directives*
3:15-4:00	*Process and Timeline*
	▪ Schedules
	▪ Approval process
	▪ Next steps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AGREEMENT NO. P70225

AGREEMENT
FOR
CONSULTING SERVICES

THIS Agreement made as of October 1, 1997, by and between **Insurance Company of North America** with its principal offices located at 1601 Chestnut Street, Philadelphia, PA 19192 (hereinafter referred to as "Company") and **William M. Mercer** with its principal offices located at 1717 Arch Street, Philadelphia, PA 19103 (hereinafter referred to as "Consultant").

It is agreed that the terms and conditions shall govern, with respect to the services to be provided to Company by Consultant.

ARTICLE I - SERVICES

Work to be performed by Consultant is described as follows:

Communications Plan as described in Consultant's proposal dated September 30, 1997, attached hereto.

ARTICLE II - PERIOD OF PERFORMANCE

The period of Performance is: **September 1997 - December 1997**

ARTICLE III - RATE OF PAYMENT FOR SERVICES

Company agrees to pay Consultant for services rendered in accordance with monthly charges incurred for the specific product and service commitments described in the above referenced proposal.

ARTICLE IV - INVOICING

Unless otherwise specified, the following invoice procedures will apply:

1. individual invoices are to be submitted on a monthly basis referencing this Agreement;

2. each invoice will reflect charges for the period being billed and cumulative figures for previous periods;

3. terms of payment are net thirty (30) days;

4. invoice due dates for payment will be calculated from the date of receipt by Company of a proper invoice;

5. invoices are to be submitted to the following address unless otherwise specified:

Ms. Denise Hill, Director
Human Resources & Services Communications
Insurance Company of North America
One Liberty Place - 1650 Market Street
Philadelphia, PA 19192
Reference: Agreement for Consulting Services No. P70225

ARTICLE V - FACILITIES, ASSISTANCE, AND SUPPLIES

Company agrees to provide adequate facilities, space, desks, chairs, telephone, and office supplies for Consultant working at Company's premises as may be reasonably required for the performance of the work described.

ARTICLE VI - TERMINATION

1. Termination for Cause

Except as otherwise provided, this Agreement may be terminated by either party for default on the part of the other party. In the event of such termination of this Agreement by Consultant, Company's liability to Consultant shall be limited to payment to Consultant of amounts due for completed services.

2. Termination for Company Convenience

Company may, for any reason or for its convenience, terminate performance of the Consultant upon notice thereof to Consultant. Such notice shall state the extent to which such Consultant's performance shall be terminated and the date upon which such termination shall become effective. Company shall pay to Consultant the amount due for completed services as of the effective date of termination.

ARTICLE VII - TITLE, SURRENDER

Unless otherwise specified, all materials, and products developed by Consultant specifically for Comapny in the performance of this Agreement are the property of Company. All ideas, methodologies,

products or materials that Consultant has developed outside of the scope of this Agreement, even if adopted for use with Company, remain the property of Consultant. In the event of termination, Consultant shall immediately upon the effective date thereof turn over to Company all material developed in the performance of this Agreement, including but not limited to, flow charts, working papers, narrative descriptions, reports, etc.

ARTICLE VIII - LIABILITIES OF CONSULTANT

Consultant shall be liable for the loss, destruction of, or damage to Company-furnished materials and/or facilities only if such loss, destruction, or damage was due to the negligence of Consultant. In no event shall Consultant be liable to Company for any special, or consequential damages in connection with or arising out of the existence of, the furnishing of, functioning of, or Company's use of any item of services provided for under this Agreement.

ARTICLE IX - INDEMNIFICATION

Consultant agrees to indemnify and hold Company harmless from any loss, liability, or claim for bodily injury or property damage which may arise or grow out of Consultant's negligent performance.

ARTICLE X - CONFIDENTIAL RELATIONSHIP

The Consultant shall not disclose, duplicate, copy or use for any purpose other than the performance of this Agreement and shall treat as confidential and as proprietary to Company all information which relates to Company's research, development, trade secrets or business affairs; provided, however, the obligation to treat as proprietary and confidential shall not apply to information which shall be publicly available, shall be in Consultant's possession on the date of this Agreement, shall not have been obtained from Company, shall be developed by Consultant outside the scope of any agreement with Company, or shall be obtained rightfully from third parties.

ARTICLE XI - INDEPENDENT CONTRACTOR/INSURANCE

Consultant, in the performance of this Agreement, is acting as an independent contractor and not as an employee of, or agent of, Company. Consultant shall provide for all necessary worker's compensation and employers' liability insurance as required for the period of performance specified in this Agreement, for damages caused (or contributed to) by Consultant and provide all medical coverage and any other similar items required by any applicable laws, regulations, or employment agreements.

ARTICLE XII - NON-USE OF COMPANY NAME

Consultant agrees that it will not in the course of performance of this Agreement or thereafter use or permit the use of Company's name in any advertising or promotional media as a customer or client of Consultant without the prior written consent of Company.

ARTICLE XIII - COMPANY SECURITY REGULATIONS

Consultant will comply with Company security relations applicable to each location to which Consultant has access pursuant to this Agreement. When deemed appropriate by Company, Consultant will be issued a visitor identification card. Such card will be surrendered by Consultant upon demand by Company or upon termination or completion of this Agreement.

ARTICLE XIV - TECHNICAL DIRECTION

The overall responsibility for technical direction of Consultant lies with the Company Project Manager, and such direction shall adhere to the provisions of this Agreement.

ARTICLE XV - SUPREMACY OF THIS AGREEMENT

The provisions, terms, and conditions of this Agreement represent the entire agreement between Company and the Consultant and supersede any prior written agreement or understanding not incorporated herein. In the event that inconsistencies exist between the Agreement and any prior written agreement or understanding, the terms of this Agreement shall prevail.

ARTICLE XVI - RIGHT OF ASSIGNMENT

Neither this Agreement nor any rights or obligations hereunder may be assigned by either party hereto without the consent of the other. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Notwithstanding the foregoing, nothing shall prevent the use of this Agreement or assignment in whole or in part thereof by Company to Company's affiliates or subsidiaries of either thereof. Any attempt to assign or subcontract this Agreement by Consultant shall be null and void and of no force or effect.

ARTICLE XVII - FURTHER ASSURANCE

The parties agree to perform all acts and execute all supplementary instruments or documents which may be necessary or desirable to carry out the provisions of this Agreement.

ARTICLE XVIII - FORBEARANCE

The failure of either party to insist upon the performance of any terms or conditions of this Agreement, or the waiver of enforcing penalties resulting from any breach of any of the terms or conditions of this Agreement shall not be construed as waiving any such terms, conditions, rights, or privileges, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

ARTICLE XIX - ADDRESS OF PARTIES

Any notices or other correspondence in connection with this Agreement shall be addressed as follows:

If to Company: Ms. Denise Hill, Director
Human Resources & Services Communications
Insurance Company of North America
One Liberty Place - 1650 Market Street
Philadelphia, PA 19192

If to Consultant: William M. Mercer
1717 Arch Street
Philadelphia, PA 19103

ARTICLE XX - FORCE MAJEURE

Neither party shall be liable or deemed to be in default for any delays or failure in performance or nonperformance under this Agreement resulting directly or indirectly from acts of God, acts of the public enemy, war, accident, fires, electrical failure, machine failure, explosions, earthquakes, floods, the elements, strikes, lockouts, labor disputes, Governmental order or regulation, or any other cause beyond its reasonable control.

ARTICLE XXI - OWNERSHIP OF DOCUMENTS, COPYRIGHTS, PATENTS, AND OTHER MATERIALS

1. All originals and negatives of all analyses, plans, drawings, reports, photographs, models, specimens, specifications, and other documents or materials required to be created by Consultant hereunder, in the performance of this Agreement, including drafts and reproduction copies thereof (the "Proprietary Materials"), shall be and remain the exclusive property of Company and Company shall have the right to publish, transfer, sell, license, and use all or any part of such Proprietary Materials without payment of any additional royalty, charge or other compensation to Consultant. Consultant acknowledges that any copyrightable materials developed by Consultant hereunder shall be deemed to have been developed by Consultant as an employee or "for hire" as defined by U.S. Copyright Law, so that all copyright rights in said Proprietary Materials and associated materials belong exclusively to Company. To the extent that any such Proprietary Materials or parts thereof may not be deemed "works for hire" or employee work product by operation of law, then Consultant hereby conveys and assigns all rights, title, and interest in the ownership of any copyright in said Proprietary Materials to Company, and said copyright shall vest in Company immediately upon creation. Company shall have the right to obtain and hold in its own name copyrights and similar protection which may be available in any such Proprietary Materials. Consultant agrees to give Company, or its designees, all assistance reasonably required to perfect such rights, including but not limited to, the identification of any such materials and the execution of any instruments required to register copyrights. At the request of Company, Consultant will deliver to Company all

to register copyrights. At the request of Company, Consultant will deliver to Company all Proprietary Materials, including copies, in its possession, except that Consultant, with Company's written consent, may retain copies of such reports and other documents for general reference use.

2. Any other materials owned or to be procured by Consultant to be delivered or furnished by Consultant to Company hereunder, which are not created specifically by Consultant for Company, will be licensed or otherwise conveyed to Company to the extent necessary to fulfill the requirements of the specifications set forth in the Task Orders attached to and made a part of this Agreement.

ARTICLE XXII - GOVERNING LAW

This Agreement shall be deemed to be entered into and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

ARTICLE XXIII - PATENT AND COPYRIGHT INFRINGEMENT

Consultant agrees to indemnify Company, defend and hold Company harmless from any and every expense, damage, or loss arising out of any claim that the services provided hereunder or any part thereof constitutes an infringement or other violation of any patent, copyright, or trade secret rights of any other party.

ARTICLE XXIV - SPECIAL PROVISIONS

_____

_____

_____

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the day and year first above written.

CONSULTANT:

WILLIAM M. MERCER

By: Gilbert D. Inglis

Title: PRINCIPAL

Date: 10/13/97

COMPANY:

INSURANCE COMPANY OF NORTH AMERICA

By: _____

Title: _____

Date: _____

AH970903/jc - 10/6/97

Copy to: Denise Hill

RECEIVED
OCT - 3 1997

Mercer Consulting Fees

Restated 9/30/97

Original Services Requested

Project Components	Consulting (planning & writing)	Design (graphics approach & layout)	Production (print coordination, proofing; peer review; etc.)	Total
Project team meetings and conference calls *(includes meeting preparation and follow-up)*	$20,000-$25,000	N/A	N/A	$20,000-$25,000
Ongoing Communication Consulting (1997) *(Planning, strategic consulting; team meetings; scheduling; etc.)*	$20,000-$30,000	N/A	N/A	$20,000-$30,000
Employee Newsletter *8 pages*	$13,000-$16,000	N/A	N/A	$13,000-$16,000
Plan Information Kit (Cash Balance Version) *(including brochure, beneficiary form, Q&A*, fund performance flyer, feedback form)*	$40,000-$48,000	$14,000-$16,000	$1,500-$2,500	$55,500-$66,500
Memos to Target Populations				
• *Tier 1 letter*	$3,500-$4,000		$250-$300	$3,750-$4,300
• *Advance letter for managers*	$3,500-$4,000		$250-$300	$3,750-$4,300
Subtotal	**$100,000-$127,000**	**$14,000-$16,000**	**$2,000-$3,100**	**$116,000-$146,100**
Clerical Support (3%)				$3,480-$4,383
Mercer Administrative Charges (10%)				$11,600-$14,610
Total*	**$100,000-$127,000**	**$14,000-$16,000**	**$2,000-$3,100**	**$131,080-$165,093***

* This Q&A will also go to managers with their advance letter.

865a

SUPPD1890

Note:

Printing charges will be billed to CIGNA directly by the vendor, after Mercer reviews invoices for accuracy. The printing estimate for 25,000 copies of the cash balance version of the kit was $47,000. An additional 10,000 copies of the pension version will add $16,000. We cannot guarantee these costs, since they will be based on final print specifications.

Additional Services Requested (beyond original scope)

Project Components	Consulting (planning & writing)	Design (graphics approach & layout)	Production (print coordination, proofing, peer review, etc.)	Total
Pension Plan Version of Brochure and Q&A for Information Kit	$8,000-$10,000	$4,000-$6,000	$750-$1,200	$12,750-$17,200
Supplemental Plan Insert for Cash Balance Participants, with Beneficiary Form and Payment Form	$3,000-$4,500	$1,200-$1,500	$250-$300	$4,450-$6,300
Subtotal	**$11,000-$14,500**	**$5,200-$7,500**	**$1,000-$1,500**	**$17,200-$23,500**
Clerical Support (3%)				$516-$1,720
Mercer Administrative Charges (10%)				$705-$2,350
Total*	**$11,000-$14,500**	**$5,200-$7,500**	**$1,000-$1,500**	**$18,421-$27,570**

Total Projected Fees				
Original Services – Mercer				$131,080-$165,093
Additional Services – Mercer				$18,421-$27,570
Estimated Production Costs				$63,000-$63,000
Total				**$212,500-$255,663**

SUPPD1891

8668

Staging of Messages in Key Media

For Managers

Overview	• Announce changes to retirement benefits—cash balance and SIP • Build the business case (why the changes make sense and how they fit within the context of the overall business strategy) – Value for company – Value for employees • Outline specific changes coming in each plan • Identify the employee groups affected • Explain transition provisions and benefit protections • Outline communication plan for employees, including the schedule • Outline the tools and resources available to them • Q&As

SUPPD1892

Staging of Messages in Key Media

For "All" Employees

Newsletter #1	• Announcement of change • Senior management endorsement (letter from CEO) • Rationale for change – What's in it for the company – What's in it for employees • Retirement philosophy – Linkages among plans – Partnership between CIGNA and employees – Protection of earned benefits • Who the changes will/will not affect and why – Transition provisions • Cash balance plan basics – "Fixed investment" account – Portability – Linkage with SIP • SIP changes – Variable profit-sharing match in company stock – New fund choices – Linkage with cash balance • More information to come • Decisions/actions needed • Q&As
Newsletter #2	• CIGNA retirement benefit philosophy • The importance of planning ahead – Sources of retirement income – Employee responsibility • Retirement income scenarios – Impact of varying savings strategies – Impact of varying investment strategies • Getting the most from the SIP – Start early – Save more – Invest appropriately • Investment fund mix – Purpose of each fund • Basic considerations for creating a savings and investment strategy – Risk vs. reward – Time horizon – Diversification • More information to come • Q&As

SUPPD1893

Staging of Messages in Key Media

For "All" Employees (cont'd)

Information Kit	*Brochure* • CIGNA's retirement philosophy • Key features of each plan: Cash balance and SIP – Eligibility/enrollment – Account growth – Investments – Loans & withdrawals – Payment of benefits • How plans work together *Retirement planning worksheet* • To establish savings goals • To develop an investment strategy *Fund flyer* • Brief descriptions of funds • Fund performance history (bar graphics) • Sample allocation portfolio *Beneficiary form*

SUPPD1894

Staging of Messages in Key Media

For Tier 1 Employees

Memo	• CIGNA is introducing a new cash balance plan that will replace the pension plan for most employees. They are not affected by this. • A key goal of new plan is fairness for all employees. • Because of their combined age and service, the current pension plan will deliver a better benefit than the new cash balance plan. • There is no change to their pension payment options—their benefit will be paid in the form of an annuity. • The company is also introducing changes to the SIP—additional investment choices and a variable profit-sharing contribution. If they participate in that plan, they will benefit from those improvements. • The SIP changes could mean an increase in their total retirement benefits. • They should plan ahead, considering their benefits from the pension plan, SIP, Social Security and other personal savings, to ensure adequate income at retirement.

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SUPPD1895

CIGNA Media Components Outline

	Media Components	First Draft Responsibility	
		Mercer	CIGNA
October	▪ Call Center and Counselor Q&As	X	X
	▪ H.R. advance communications		X
	▪ Initial manager overview	X	
November	▪ Letter to Tier 1 Employees	X	
	▪ Newsletter #1 (Overview plus details on cash balance)	X	
	▪ Newsletter #2 (SIP plus investment funds)	X	
	▪ Other target memos (to be determined)	X	X
December	▪ Information kit (Brochure, Q&A, worksheet, fund and investment information)	X	
January	▪ Information kit distributed to CII		X
	▪ Newsletter #3 (Q&As)		
	▪ Guidelines for variable match		
February	▪ Newsletter #4 (financial planning)		
	▪ Feedback device	X	
March	▪ Employee meetings (age 45+) at certain sites		X
April	▪ Employee meetings (age 45+) at certain sites, cont'd		X
	▪ Total Compensation Statement		
May			

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SUPPD1896

CIGNA
Communication Success Measures

Objectives for 1997	Measures	Results
• Dispel perception of a take-away and focus on the "new deal." Create awareness of equity.	• In sensing devices, 75% of employees rate the new plan positively.	TBD
• Educate about the total integrated retirement program, including cash balance and SIP.	• Each communication piece emphasizes the integration theme in a visible way: – first in order of importance thematically – visually displayed in graphics – reinforced throughout text	TBD
• Provide targeted communications and appropriate messaging to employees based on impact and need, so that each employee understands the changes and CIGNA's motivation for change.	• Each target group receives tailored communication: – Tier 2 (and some Tier 1) employees moving to the Cash Balance Plan – Tier 1 employees remaining in the current pension plan – Counselors (Call Center, etc.)—those responsible for answering employee questions – Older employees (age 45+) – Healthsource employees – Executives with supplemental benefits – H.R. generalists – Divisional managers	TBD
• Enable division managers to support the program and to be program advocates.	• In sensing devices, – 85% of managers say they had the information they needed – 85% of managers say they support the change	TBD
• Encourage employees to participate in the SIP.	• Increase the number of employees who participate in the SIP by 10% by July 1998.	TBD

CIGNA Contact List

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September 23, 1997

Pension War Is Breaking Out As Deloitte Workers Study Plan

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By ELIZABETH MACDONALD
Staff Reporter of THE WALL STREET JOURNAL
September 23, 1997

You'd think Deloitte & Touche would be one firm that knows how to come up with a new retirement plan for its workers. After all, it's one of the world's top pension-consulting firms, serving blue-chip clients like Microsoft Corp., General Motors Corp. and Chrysler Corp.

But its workers also know better than most employees how to judge a pension plan's impact, and now they're furious about the new plan Deloitte has adopted for them.

In January, the Big Six accounting and consulting firm enrolled most of its 14,000 workers in its new pension program, telling them it would be a big improvement over their old plan. But when employees crunched the numbers, they concluded that the new plan won't improve most workers' benefits and it will cut some pension payouts by nearly 70%, with employees aged 40 to 50 being socked the hardest.

Some employees in Deloitte's tax division are so angry they are threatening to decamp to other Big Six firms. Meanwhile, employees say Deloitte has threatened to fire anyone who talks to the media about the matter.

The firm declines to comment on the alleged threat, but it does appear to be trying to calm the waters. Partners in its New York, New Jersey and Connecticut offices, where the firm's tax experts are based, are informally telling Deloitte employees that the whole affair is a terrible mistake that will be corrected, according to several Deloitte employees. "We didn't want to disadvantage anybody," says James H. Wall, Deloitte's national director of human resources. "But certain individuals were disadvantaged."

In response to a reporter's query, Deloitte provided a statement saying that late last May, "we learned of unintended consequences for some employees. We are in the process of examining the extent of this and plan to make modifications to fully resolve the issue." At Deloitte, the partners' committee that makes recommendations on employee-retirement benefits is scheduled to meet next Monday at the firm's headquarters in Wilton, Conn., to discuss the brouhaha.

Deloitte spokeswoman Ellen Ringel says the plan wasn't an effort to save Deloitte any money. A statement she provided Monday from Deloitte's management says that it "modified its pension plan to better meet the retirement needs of our people by helping them achieve financial security at retirement and to provide an incentive for younger people to stay with the firm for a longer period of

time."

The pension-payout reductions surprised outside experts. "Cuts on the order of 70%? I haven't seen anything like that -- that's pretty deep," says Thomas Murphy, who has studied a summary of Deloitte's plan and is a consulting actuary and a principal at Kwasha Lipton Group, a benefits-consulting unit of Deloitte rival Coopers & Lybrand.

In the past, Deloitte's employee benefits have received high marks. Working Mother magazine recently named J. Michael Cook, Deloitte's chairman and chief executive, its Family Champion of the year for his firm's "promotion of family-friendly practices in the workplace," among other things. Mr. Wall also notes that Deloitte has beefed up its other employee-benefits programs over the last five years.

The pension flap started late last year, when Deloitte's board asked the firm's retirement-plan experts to draw up a new "cash balance" pension plan for all employees who weren't partners at the firm, including directors, who are a step below partners.

Partners would get to stay in their old plan, and employees aged 50 and over with 15 years or more of service would get to keep the benefits they had under the old plan.

The experts then told the board that this new plan "would not harm" any of the firm's employees, according to several directors who talked with board members. The board subsequently yanked the old pension plan, effective Jan. 1, 1997.

Retirement benefits accumulate differently in different pension plans. In traditional pension plans, the value of the benefit grows progressively faster as an employee approaches retirement. But in cash-balance plans, benefits grow at an even rate from year to year. Though the design of such plans varies, they tend to pay out less to older workers over the long term than traditional plans, and they are easier and cheaper for employers to administer.

Deloitte's new plan packed a double whammy for certain workers. The formula Deloitte used to credit future contributions to the new plan resulted in lower benefits than the old plan would have provided, says Kwasha. It analyzed the summary distributed to Deloitte employees at the request of The Wall Street Journal.

In addition, when Deloitte pulled its employees out of the old pension plan, older employees lost the rapid growth in their benefit that they would have gotten under the old plan in the years just before retirement. As a result, many veterans won't receive nearly as much as they would have under the old plan.

On March 24, Deloitte's benefits administration division sent a memo to workers promising that each would get a new "personalized pension statement" on or about June 1. "The Firm is committed to helping you build long-term financial security," the plan's brochure promised.

On April 25, 10 tax directors e-mailed William Parrett, managing partner of Deloitte's Connecticut, New Jersey and New York region, to express their distress. "We're certainly concerned with [the plan's] financial implications for us and our families," the e-mail writers wrote. "It would probably also benefit all involved if some of those who designed the new policy would make themselves available to answer technical questions."

Several directors say Mr. Parrett was outraged when he found out about the problem and later assured them that it would be solved immediately. Mr. Parrett referred a reporter's calls seeking comment to Deloitte's public relations department, which declined comment.

But so far, employees say, the firm hasn't conducted any employee meetings or sent out any voice mail, e-mail or interoffice memos about the new program. In addition, Deloitte employees got their "personalized pension statements" in August, almost two months late. Deloitte has yet to provide the actual plan documents, which give more specific details.

Deloitte isn't the only Big Six firm that has gotten into trouble over employee pensions. Last May, the U.S. Supreme Court refused to review a November 1996 decision handed down in Cincinnati's sixth Circuit Court of Appeals against Ernst & Young.

Former partner Peyton Larue Simpson claimed that Ernst & Young had fired him because he was approaching the age when his retirement benefits would be vested. The court found that Mr. Simpson was one of 120 partners over age 40 who were laid off during an 18-month period after the 1989 merger of Arthur Young & Co. and Ernst & Whinney.

The court ruled that the firm, which also hired 162 new partners under age 40, fired the older partners to reduce its unfunded pension liability, then projected at $290 million. Mr. Simpson got more than $5 million in a judgment that included attorney fees, court costs and interest.

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THE WALL STREET JOURNAL. ONLINE

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September 20, 1999

Pension-Plan Controversy Escalates As IBM Gives In to Employee Anger

By ELLEN E. SCHULTZ, JON G. AUERBACH and GLENN BURKINS
Staff Reporters of THE WALL STREET JOURNAL
September 20, 1999

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Chalk it up as a victory for aging baby boomers.

On Friday, International Business Machines Corp. gave in to the protests of middle-aged employees and significantly revised its plan to switch to cash-balance pensions, a controversial new type of pension system that has been criticized for benefiting young workers at the expense of older ones. IBM said anyone 40 or older with at least 10 years of service could remain in the old plan, more than doubling the number of employees who have a choice.

IBM said its retreat was driven entirely by employees, who barraged the company with e-mails and other correspondence, and used the Internet to stoke their collective anger. "We heard from enough of them to make the changes," says a company spokesman, John Bukovinsky.

But the controversy stirred by the cash-balance phenomenon, which stayed under the radar for several years, goes well beyond IBM. One reason is that the computer company's disgruntled employees reinforced their message by getting Congress into the act. Republican Sen. James M. Jeffords of Vermont, one of several legislators who got involved, eventually wrote to IBM's chairman, Louis V. Gerstner Jr., asking him to reconsider. The Senate Health, Education, Labor and Pensions Committee, which Mr. Jeffords heads, is holding a hearing Tuesday to look into cash-balance pension plans.

IRS Tells Field Offices to Hold Off on Clearing 'Cash Balance' Plans (Sept. 17)

Cash-Balance Pension Plans Studied by Equal Employment Commission (Sept. 15)

IBM Settles Pension Dispute; Deal May Have Wide Impact (Sept. 14)

Riled IBM Computer Workers Consider Organizing a Union (July 26)

IBM Will Adopt 'Cash-Balance' Plan for U.S. Employees' Pension Program (May 4)

The Internal Revenue Service is trying to figure out whether the plans qualify for favorable tax treatment. Although it has approved favorable tax treatment for several hundred plans in the past, the IRS last week put a moratorium on the approval of any more of them until it sorts out the complex issues.

Perhaps most important is the issue of possible age discrimination. Some IBM employees were preparing to sue the computer company alleging age bias because of the way the new plan treated older workers. The Equal Employment Opportunity Commission had begun an investigation into IBM's pension change.

IBM's backtracking is certain to give pause to other companies that are considering cash-balance pension plans. Indeed, a few other companies, such as New York utility Niagara Mohawk Power, have already revamped plans in the face of employee resistance, and the move by high-profile IBM is likely to send chills through many others of the 300 or so companies that have adopted such plans.

The computer giant says it is confident its proposed changes were legal, even without the Friday revision. But its retreat will only reinforce the arguments of those who say the plans violate pension and age-discrimination laws. It could strengthen the hand, for instance, of the employees who have brought a class-action suit against AT&T Corp. following its cash-balance conversion last year. AT&T says its plan isn't discriminatory.

Cash-balance pension plans, which were devised in the late 1980s and began really catching on in the mid-1990s, are promoted as a way to "modernize" a company's pension plan for today's highly mobile work force. Traditional "defined benefit" pension plans are structured so employees earn as much as half their ultimate benefits in their last five to 10 years on the job. But under cash-balance plans, employees accrue benefits at a steady rate throughout their years of employment. The company sets aside a hypothetical sum -- say, 3% to 7% of salary -- each year for each employee. This theoretical "cash balance" grows at a specific rate, perhaps 5%. If the employee leaves, he or she can usually take the accumulated benefits along. This may be a better system for younger workers who switch jobs before reaching peak pension-earning years.

But many older workers have discovered that when their employer switches to a cash-balance plan, they can lose anywhere from 20% to 50% -- in extreme cases -- of the value of their pensions. Not only do they miss out on the chance to fatten the pension in the late years, but also, in many cases, older workers have found that the opening balance in their cash-balance accounts was significantly lower than the value of their old benefits.

The reason for this is that companies have flexibility in deciding what assumptions they use to calculate the opening balance. The overall result: Some older employees find they would have to work for five or more years just to earn their way back to their old level of benefits -- a phenomenon variously known as "pension plateau" or "wearaway."

Employers sometimes sweeten the cash-balance option for some of their oldest employees, and give some of them the option of staying in the old plan. But typically, many workers who just miss the cutoff are left worse off.

For companies, on the other hand, the switch to cash balance has financial rewards. Because they reduce future pension liabilities, companies don't need to put as much into their pension plans.

And even when a company has a huge pension surplus, and thus doesn't need to contribute to the pension plan at all, it can benefit by converting to a cash-balance plan. That is because companies can take a credit on their income statements when pension income exceeds current liabilities. Cutting benefit obligations through conversion to a cash-balance plan reduces liabilities, fattens the surplus and thus can boost the earnings still more.

IBM Figures

IBM has an overfunded pension plan, and hasn't had to make new contributions in recent years. In 1998, its plan's surpluses provided IBM with about a $450 million credit to earnings. By converting most employees to a cash-balance plan, it was hoping to add to those surpluses and be able to report

about a $650 million credit. IBM's Mr. Bukovinsky says that the company, anticipating a boost to its income statement from the pension change, has spent about $200 million to increase compensation and expand a stock-option program. He says there is a possibility that Friday's pension revision could affect the company's bottom line, but says it's too early to say by how much. The cost to IBM "won't be insignificant," Mr. Bukovinsky says.

Whether these plans run afoul of age-discrimination law is a matter yet to be decided. The primary relevant statute is the Age Discrimination in Employment Act of 1967, which protects workers age 40 and older. To win under it, a complainant must prove an employer used age considerations when determining any term, condition or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignment and training.

Age-discrimination law and related tax and pension laws were amended in 1986 to, among other things, bar employers from using age as a basis for ending or reducing a worker's pension accruals under defined-benefit plans. The change was aimed at companies that, for instance, stopped pension accruals for workers once they reached age 65. Pension law says the rate of accrual can't go down on the basis of age. Now, some are arguing that cash-balance plans run afoul of this provision because the rate of accrual declines with age, something that doesn't happen under traditional pension plans.

IRS Moves

Earlier this month, the office of Rep. Bernard Sanders, Independent of Vermont, leaked to the press a confidential memo in which the IRS district office in Cincinnati said it thought cash-balance plans discriminated against older workers. The IRS Washington office had publicly remained silent on the issue until last week, when it instructed its field offices to stop approving cash-balance plans until further notice.

The issue hasn't yet gotten a clear airing in the courts. The first case against a cash-balance plan was Aull v. Cavalcade Pension Plan, brought against Furr's/Bishop's Cafeterias Inc., one of the first companies to convert to a cash-balance plan, back in 1987. The IRS began an audit of that plan and essentially forced the employer to settle the case in March of this year.

A broader case making its way to trial is a suit by employees of Onan Corp., a subsidiary of Cummins Engine Co. The court has certified the case as a class action under the age-discrimination and pension laws. Set for trial next April, the suit has created shock waves among those who follow benefit issues. The IRS has sided with employees and asked the court to disqualify Onan's pension plan.

At the EEOC, Ida L. Castro, the chairwoman, says, "There is a reason I've taken a very measured approach" on whether cash-balance plans involve age bias. "It's very complicated. It's really difficult to come up with a broad-stroke decision."

Age-discrimination complaints have been on a downtrend, perhaps because of the low-unemployment economy. The EEOC investigated 26,350 such complaints last year, down from 32,000 in 1992. About half of the complaints blame age for a dismissal, and most of the rest allege unfair treatment or failure to be hired because of age. Only about 1.5% of 1998 complaints involved pensions or other benefits.

Case by Case

But with the conversion to cash-balance plans, it is clear that pension-related complaints are on the rise. David Certner, who coordinates economic issues for the AARP, says pension issues may be emerging as the next battleground in the age-discrimination war.

Government officials expect the matter to be dealt with on a case-by-case basis. By allowing long-employed workers 40 and over -- the key age in age-bias law -- to stay in existing plans, companies such as IBM may skirt a lot of liability.

Companies can do things that soften or eliminate the impact on older workers. Eastman Kodak Co. will give all its U.S. workers a choice of remaining in the old pension plan or joining the new one. They have until the end of November to decide. And Boeing Co. has eliminated the "wearaway" problem by keeping the old benefit in one pot and starting the new benefit from zero, so even older workers begin to build a benefit from the start.

One of several bills in Congress addressing cash-balance issues deals with the wearaway problem, and several others require employers to make clearer to workers how a pension conversion would affect them. Employees' confusion about how they were affected was one of the first issues to arise with cash-balance plans.

IBM Pension Switch

At IBM, rumors began to circulate about a switch to cash balance late in 1998. In April, after news leaked that IBM was considering such a move, employees discovered that a "pension calculator" had been removed from the company's internal computer system, making it harder for them to figure the value of their pensions.

On May 3, IBM announced its plan to convert. Two weeks later, IBM employees launched a Web site on Yahoo! (clubs.yahoo.com/clubs/ibmpension) to compare notes and air gripes about the plan. The Yahoo board says it has recorded about 1.7 million page views since May 18. And as people began getting their personal profiles from IBM on the new pension plan in June, many long-service employees realized their pensions would fall.

About this time, IBM's human-resources chief, J. Thomas Bouchard, laid out the cash-balance setup to board members. Although the possibility of a backlash was raised, the company clearly underestimated that reaction.

Workers began to organize in July, forming the IBM Employee Benefits Action Coalition, and joined forces with a group of activist retirees at General Electric Co., which doesn't have a cash-balance plan but has a much-overfunded traditional plan. IBM employees reached out to the EEOC, the IRS and Congress. IBM employees showed up at August town-hall meetings held by numerous members of Congress, making their biggest stand in Vermont, where 800 people jammed into the art center at St. Michael's College in Winooski for a meeting held by Rep. Sanders.

Mr. Gerstner and other top managers were astonished by the reaction, company insiders say, and before long began planning a retreat. On Friday, Mr. Gerstner called Sen. Jeffords to tell him of the change. The senator praised IBM for "understanding what's the right thing to do."

Union Drive at IBM

The reversal hasn't ended the problem for IBM, however. The Communications Workers of America

has used the controversy to launch organizing drives at IBM facilities. In Poughkeepsie, N.Y., where IBM has about 10,000 employees, organizers have been collecting signatures and passing out flyers. "The whole union movement is gaining steam," says Bruce Cunningham, a 36-year-old employee.

Some IBMers say the past three months make them feel differently about IBM. Beth Harrington, a programmer in Rochester, N.Y., says she joined the company 10 years ago because of the pension plan and impressive benefits.

Although 45 years old, she missed by just a few weeks the 10-year service cutoff set under Friday's revised IBM plan. Ms. Harrington, who has two children and whose husband is self-employed, says she has $41,000 in her cash-balance retirement account and expects to get 7% of her about $80,000 salary each year, plus interest, under the new plan. "I cannot retire on that," she says, adding that she is considering leaving the company.

The pension-plan flap at a high-profile employer like IBM has sent a distinct message to employers, a reminder to beware of the sentiments of aging workers. It is as if the generation that once rallied around the slogan "Don't trust anyone over 30" now has a new one: Don't mess with anyone over 40.

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December 4, 1998

'Cash Balance' Saves Millions, Hides Pitfalls From Workers

By ELLEN E. SCHULTZ and ELIZABETH MACDONALD
Staff Reporters of THE WALL STREET JOURNAL
December 4, 1998

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Largely out of sight, an ingenious change in the way big companies structure their pension plans is saving them millions of dollars, with barely a peep of resistance. Unless they happen to have a Jim Bruggeman on their staff.

Sifting through his bills and junk mail one day last year, Mr. Bruggeman found the sort of notice most people look at but don't spend a lot of time on. His company was making some pension-plan changes.

The Ins and Outs of Cash-Balance Plans

The company, Central & South West Corp., was replacing its traditional plan with a new variety it said was easier to understand and better for today's more-mobile work force. A brochure sent to workers stressed that "the changes being made are good for both you and the company."

Alone among Central & South West's 7,000 employees, Mr. Bruggeman, a 49-year-old engineer in the Dallas utility's Tulsa, Okla., office, set out to discover exactly how the new system, known as a cash-balance plan, worked. During a year-long quest to master the assumptions, formulas and calculations behind it, Mr. Bruggeman found himself at odds with his superiors, and labeled a troublemaker. In the end, though, he figured out something about the new pension system that few other employees have noticed. For many of them, it is far from a good deal.

But it clearly was, as the brochure noted, good for the company. A peek at a CSW regulatory filing in March 1998, after the new plan took effect, shows that the company saved $26 million in pension costs last year alone. Other government filings revealed that whereas the year before, CSW had to set aside $30 million to fund its pension obligations, after it made the mid-1997 switch it didn't have to pay a dime to fund the pension plan.

Pension Light

The switch to cash-balance pension plans -- details later -- is the biggest development in the pension world in years, so big that some consultants call it revolutionary. Certainly, many call it lucrative; one says such a pension plan ought to be thought of as a profit center. Not since companies dipped into pension funds in the 1980s to finance leveraged buyouts have corporate treasurers been so abuzz over a pension technique.

But its little-noticed dark side -- one that many companies don't make very clear to employees, to say the least -- is that a lot of older workers will find their pensions cut, in some cases deeply.

So far, only the most financially sophisticated employees have figured this out, because the formulas are so complex. Even the Labor Department and the Internal Revenue Service have trouble with them. So thousands of employees, while acutely aware of how the stock market affects their retirement nest eggs, are oblivious to the effect of this change.

One might get the impression, from the rise of 401(k) retirement plans funded jointly by employer and employee, that pensions are a dead species. In fact, nearly all large employers still have pension plans, because pulling the plug would be too costly; the company would have to pay out all accrued benefits at once. Meanwhile, companies face growing obligations as the millions of baby boomers move into their peak pension-earning years.

Now, however, employers have discovered a substitute for terminating the pension plan: a restructuring that often makes it unnecessary ever to feed the plan again.

Pitfalls for Employers

But this financially appealing move has its risks. The IRS has never given its blessing to some of the maneuvers involved. If employers don't win a lobbying battle currently being waged for exemptions from certain pension rules, some of these plans could be in for a costly fix.

In addition, the way employers are handling the transition could result in employee-relations backlashes as more and more older workers eventually figure out they are paying the price for the transformation of traditional pension plans.

In those traditional plans, most of the benefits build up in an employee's later years. Typical formulas multiply years of service by the average salary in the final years, when pay usually is highest. As a result, as much as half of a person's pension is earned in the last five years on the job.

With the new plans, everyone gets the same steady annual credit toward an eventual pension, adding to his or her pension-account "cash balance." Employers contribute a percentage of an employee's pay, typically 4%. The balance earns an interest credit, usually around 5%. And it is portable when the employee leaves.

For the young, 4% of pay each year is more than what they were accruing under the old plan. But for those nearing retirement, the amount is far less. So an older employee who is switched into a cash-balance system can find his or her eventual pension reduced by 20% to 50% or, in rare cases, even more.

This is one way companies save money with the switch. The other is a bit more complicated. Companies can also benefit from the way they invest the assets in the cash-balance accounts.

If the employer promised to credit 5% interest to employees' account balances, it can keep whatever it earns above that amount. The company can use these earnings to finance other benefits, to pay for a work-force reduction, or -- crucially -- to cover future years' contributions. This is why the switch makes pension plans self-funding for many companies.

Although employers can do this with regular pensions, the savings are greater and easier to measure

in cash-balance plans. The savings often transform an underfunded pension plan into one that is fully funded. "Cash-balance plans have a positive effect on a company's profitability," says Joseph Davi, a benefits consultant at Towers Perrin in Stamford, Conn. They "could be considered a profit center."

Motive for the Move

Employers, however, are almost universally reticent about how they benefit. "Cost savings were not the reason the company switched to a cash-balance plan," says Paul Douty, the compensation director at Mr. Bruggeman's employer, CSW. Sure, the move resulted in substantial cost savings, he says, but the company's goal was to become more competitive and adapt to changing times. Besides, he notes, the $20 million in pension-plan savings last year were partly offset by a $3 million rise in costs in the 401(k); the company let employees contribute more and increased its matching contributions.

There is another reason some employers like cash-balance plans: By redistributing pension assets from older to younger workers, they turn pension rights -- which many young employees ignore, since their pension is so far in the future -- into appealing benefits today. At the same time, older workers lose a financial incentive to stay on the job, since their later years no longer can balloon the pension.

Some pension professionals think companies should be more candid. "If what you want to do is get rid of older workers, don't mask it as an improvement to the pension plan," says Michael Pikelny, an employee-benefits specialist at Hartmarx Corp., an apparel maker in Chicago that decided not to install a cash-balance plan.

Under a Microscope

Most employees aren't equipped to question what employers tell them. But Mr. Bruggeman was. He had a background in finance, his hobby was actuarial science, he had taken graduate-level courses in statistics and probability, and he knew CSW's old pension plan inside and out. So when the company announced it was converting to a cash-balance plan last year, he began asking it for the documents and assumptions he needed to compare the old pension to the new one.

With each new bit of data, he gained another insight. First, he figured out that future pension accruals had been reduced by at least 30% for most employees. CSW got rid of early-retirement and other subsidies and reduced the rates at which employees would accrue pensions in the future.

Employees wouldn't necessarily conclude this from the brochures the human-resources department handed out. Like most employers that switch to cash-balance plans, CSW assured employees that the overall level of retirement benefits would remain unchanged. But a close reading of the brochure revealed that this result depended on employees' putting more into their 401(k) plans, gradually making up for the reduction in pensions.

At a question-and-answer session on the new plan before it was adopted, Mr. Bruggeman spoke up and told co-workers how their pensions were being reduced. The next day, he says, his supervisor in Tulsa came to his office and told him that CSW management in Dallas was concerned that his remarks would "cause a class-action suit" or "uprising," and said he shouldn't talk to any other employees. He says the supervisor, Peter Kissman, informed him that if he continued to challenge the new pension plan, CSW officials would think he wasn't a team player, and his job could be in

jeopardy.

Asked about this, Mr. Kissman says: "In my department I would not tolerate employee harassment. I believe the company feels the same way. Past that, I really can't speak to this issue. It's being investigated by the company."

A Few Sweeteners

Employers, aware that switching to cash-balance plans can slam older workers, often offer features to soften the blow. They may agree to contribute somewhat more than the standard 4% of pay for older employees, or they may provide a "grandfather clause." CSW offered both options, saying employees 50 or older with 10 years of service could stay in the old plan if they wished. Mr. Bruggeman, a 25-year veteran, was just shy of 49. He calculated that people in his situation would see their pensions fall 50% under the new plan, depending on when they retired.

Mr. Bruggeman told company officials that the plan wasn't fair to some long-term employees. Subsequently, he says, in his November 1997 performance evaluation, his supervisor's only criticism was that he "spends too much time thinking about the pension plan." A CSW official says the company can't discuss personnel matters.

What bothered Mr. Bruggeman even more was his discovery of one of the least-known features of cash-balance plans: Once enrolled in them, some employees don't earn any more toward their pension for several years.

The reasons are convoluted, but in a nutshell: Most employees believe the opening balance in their new pension account equals the credits they've earned so far under the old plan. But in fact, the balance often is lower.

When employers convert to a cash-balance plan, they calculate a present-day, lump-sum value for the benefit each employee has already earned. In Mr. Bruggeman's case, this was $352,000 -- something he discovered only after obtaining information from the company and making the calculations himself. Yet Mr. Bruggeman's opening account in the cash-balance plan was just $296,000, because the company figured it using different actuarial and other assumptions.

This is generally legal, despite a federal law that bars companies from cutting already-earned pensions. If Mr. Bruggeman quit, he would get the full $352,000, so the law isn't violated. But if he stays, it will take several years of pay credits and interest before his balance gets back up to $352,000.

'Wearaway'

Mr. Douty says this happened to fewer than 2% of workers at CSW. But at some companies that switch to cash-balance plans, far more are affected. At AT&T Corp., which adopted a cash-balance plan this year, many older workers will have to work three to eight years before their balance catches up and they start building up their pension pot again. "Wearaway," this is called. Only if an employee knows what figures to ask for can he or she make a precise comparison of old and new benefits.

Indeed, the difficulty of making comparisons has sometimes been portrayed as an advantage of switching to cash-balance plans. A partner at the consulting firm that invented the plans in the 1980s

told a client in a 1989 letter: "One feature which might come in handy is that it is difficult for employees to compare prior pension benefit formulas to the account balance approach."

Asked to comment, the author of that line, Robert S. Byrne of Kwasha Lipton (now a unit of PricewaterhouseCoopers), says, "Dwelling on old vs. new benefits is probably not something that's a good way to go forward."

At one company, employees did know how to make comparisons. When Deloitte & Touche started putting a cash-balance plan in place last year, some older actuaries rebelled. The firm eventually allowed all who had already been on the staff when the cash-balance plan was adopted to stick with the old benefit if they wished.

Struggle at Chase

At Chase Manhattan Corp., two executives in the private-banking division hired an actuary and calculated that their future pensions had fallen 45% as a result of a conversion to a cash-balance plan by Chase predecessor Chemical Bank. "I would have had to work about 10 more years before I broke even and got a payout equal to my old pension," says one of the executives, John Healy, now 61.

He and colleague Nathan Davi say that after seven years of their complaints, Chase agreed to give each a pension lump sum of about $487,000, which was roughly $72,000 more than what they would have received under the new cash-balance plan. Although a Chase official initially said the bank had "never given any settlement to any employee over the bank's pension plans," when told about correspondence about the Healy-Davi case, Chase said that a review had determined that about 1,000 employees could be eligible for additional benefits. "We amended the plan so that it would cover all similarly situated employees," a spokesman said.

How many quiet arrangements have been reached is unknown. But employees are currently pressing class-action suits against Georgia-Pacific Corp. and Cummins Engine Co.'s Onan Corp. subsidiary, alleging that cash-balance plans illegally reduce pensions. (Both defendants are fighting the suits.) Judges have recently dismissed similar suits against Bell Atlantic Corp. and BankBoston N.A.

Concern at the IRS

Not aware of any of this ferment, Mr. Bruggeman in August 1998 filed his multiple-spreadsheet analysis of the CSW cash-balance plan with the IRS and the Labor Department, asking them for a review. Soon after, he says, a manager in CSW's benefits department called him in and "wanted to know what it would take for me to drop all this." The answer wasn't to be "grandfathered" and exempted from the new plan. "I told him all I want is for the company to ... be fair to employees," he says. "It's the principle of the thing."

The manager couldn't be reached for comment, but a CSW official says the company takes complaints "very seriously and they're thoroughly investigated. In every part of this type of investigation an employee is interviewed by a company representative, and in every initial interview the employee is asked for suggestions on what might be a preferred solution."

Even without Mr. Bruggeman's input, the IRS has a lot of cash-balance data on its plate. The agency is swamped with paperwork from hundreds of new plans seeking its approval, and applications are piling up. The delay is due in part to concern at the IRS that such plans may violate various pension

laws, according to a person familiar with the situation. Meanwhile, the consulting firms that create the plans for companies are lobbying for exemptions from certain pension rules.

They say they aren't worried. That's because "companies who now have these plans are sufficiently powerful, sufficiently big and have enough clout that they could get Congress to bend the law ... to protect their plans," says Judith Mazo, a Washington-based senior vice president for consulting firm Segal Co. Regulators, meanwhile, are playing catch-up. Bottom line, Ms. Mazo says: "The plans are too big to fail."

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7 of 11 DOCUMENTS

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March 8, 2000, Wednesday, Late Edition - Final

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LENGTH: 996 words

HEADLINE: The Electronic Rank and File

BYLINE: By VIRGINIA MUNGER KAHN

BODY:

Last October, as an uproar over the move by I.B.M. from a traditional pension plan to a cash balance plan was peaking, a group of employees at Bell Atlantic set up a Web site intended to address questions about their own pension plan.

In the weeks that followed, executives at Bell Atlantic were deluged with e-mail messages and letters expressing outrage at a similar move by the company, even though the switch had taken place two years earlier. "I've been here 26 years, and I have never seen such an outpouring," said Janice Winston, co-founder of the Bell Atlantic Employee Coalition for Retirement Security, which set up the Web site, bapensions.org.

On Jan. 19, Bell Atlantic blinked. It told 20,000 employees with 15 or more years of tenure that they would be given their benefits under a modified traditional plan if the company's analysis found that they would be better off than under the new pension plan. Generally, younger employees can do better under cash balance plans, but workers of middle-age and older often do worse, with some seeing the value of their retirement benefits drop as much as 50 percent.

Bell Atlantic denied that it had been influenced by the employee group. "We would have come to this decision had there been no Web site," said a spokesman, Steven Marcus. "We have a long tradition of staying in touch with our employees."

That is not how Ms. Winston sees it. "They knew they couldn't go forward with employee morale the way it was," she said. "I believe our Web site was key."

At a time of declining membership in traditional blue-collar unions, the Internet is spawning a new form of collective organization that is enabling once-compliant white-collar workers to put pressure on management. Though some coalitions that are formed around Web sites and fueled by e-mail and Internet chat rooms may be fleeting, and though such groups do not enjoy the legal protections that old-style unions do, they have proven to be a potent weapon that many companies must come to grips with.

The model for this new worker activism was established by I.B.M. employees after the computer giant announced its pension conversion plan last May. Originally, I.B.M. said it would allow about 30,000 employees who were near retirement to stay with the traditional plan. In September, however, it more than doubled that number to 65,000. What happened? I.B.M. employees used their computers to band together, to create programs that compared the old plan with the new and to lobby legislators in Washington against the change. The company's decision came within days of a Congressional hearing on cash balance plans.

"I just don't see how we could have done it without the Web," said Lynda French, who created www.cashpensions.com, one of the best-known sites associated with the I.B.M. employee effort. With more than 97,000 site visits and with links to government agencies, Congressional offices and other employee-sponsored Web sites, cashpensions.com has become a fount of information for organizers at other companies.

Indeed, since the I.B.M. backpedaling, employees at several large corporations besides Bell Atlantic have established Web sites and chat rooms dedicated to pension issues, including att.nac.net for AT&T employees and dukeemployees.8m.com for Duke Power employees. In addition, employees at SmithKline Beecham and the Williams Companies have set up sites at clubs.yahoo.com.

The Coalition for Retirement Security (www.pensions-r-us.org), a nonprofit umbrella organization for employee groups that is based in Springfield, Mass., has been active in getting several of these sites off the ground. "We have so many new groups coming on, it's amazing," said Paul R. Edwards, the founder of the organization.

The results have often been impressive. More than 20,000 hits have been recorded at att.nac.net since that site was set up in December with the aim of rolling back AT&T's switch in 1997 to a cash balance plan. "We have copies of hundreds of letters written to our executives," said one AT&T organizer, who insisted on anonymity. "They would never have been written without the Web site." (So far, however, AT&T is not bending to the pressure, saying it has "no plans" to change its pension plan.)

Even the Labor Department has got into the online act, setting up a special section on cash balance plans at www.dol.gov and an e-mail address to take comments and answer questions. "We've found the Internet to be one of the best ways to get information out to the public," Labor Secretary Alexis Herman said when asked about the Web site. "As the old saying goes: 'knowledge is power,' and this type of information empowers workers to make the right choices."

None of this new activism could have happened without the Internet, in the view of Ms. French, who recently retired from I.B.M. She noted that the conversions had been going on for years with not a peep of protest. "Employees didn't understand," she said. "Now, it's very difficult not to."

Some employers play down the importance of Web protests on their policy making. "We didn't need to look at the Web sites to know what our employees were thinking," said Jana Weatherbee, an I.B.M. spokeswoman. "We heard their concerns and we made adjustments."

Still, some people think the Web's role as a conduit for employee grievances will only grow. "Once this tool is understood, employees will seek to improve all their benefits programs," said David Wray, president of the Profitsharing/401k Council of America, an association in Chicago of employers with defined-contribution pension plans. "This will have a powerful impact on the workplace over the next 10 years."

Ms. Winston is already looking beyond pension issues. "Now that we understand how our retirements can be affected by decisions in Congress and by our employers, we feel we have to make active decisions to protect our rights," she said. "We hope to branch out into health benefits."

http://www.nytimes.com

GRAPHIC: Photo: Janice Winston thinks a Web site she helped set up on pensions at Bell Atlantic was crucial to a change in policy. (Tim Shaffer for The New York Times)

LOAD-DATE: March 8, 2000

FOCUS - 6 of 20 DOCUMENTS

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The Wall Street Journal

July 1, 1999 Thursday

SECTION: Pg. C1

LENGTH: 1555 words

HEADLINE: Managers, Like Other Staffers, Are Fighting Pension Cutbacks

BYLINE: By Ellen E. Schultz, Staff Reporter of The Wall Street Journal

BODY:

Managers of the world, unite!

Angry workers. Threats of work slowdowns. Stunts to embarrass the company. As a wave of pension cutbacks sweeps corporate America, there's a growing backlash among employees – and, increasingly, they're on the executive floor. And some managers are winning concessions.

The latest came this week at Prudential Insurance Co. of America, which has agreed to sell its Prudential HealthCare unit to Aetna US Healthcare, a unit of Aetna Inc.

The approaching sale this summer turned Prudential executives like Richard Condon III, 46 years old, director of group sales in South Florida, into pension detectives to figure out how the pensions of the unit's 17,000 employees will be affected when they transfer to Aetna.

When they realized that many longerservice employees' pension would be cut by as much as 40%, they complained vehemently to the chief executive's office, and the company on Monday relented. It agreed to allow the departing employees to remain eligible for an early-retirement subsidy that workers usually lose when their units are spun off to new owners.

"I'm happy they've changed their minds," says Mr. Condon. A second-generation Prudential employee who hardly sees himself in the role of executive agitator, Mr. Condon says he thinks a main reason the company listened was because many in the managerial ranks complained.

Similarly, managers have played a role in pension-reduction protests at a handful of other employers, including New York utility Niagara Mohawk Power; the Junior Achievement, an economic-education organization; Southern New England Telecommunications Corp., a subsidiary of SBC Communications Inc.; and accounting firm Deloitte Touche.

"As companies lean to big reduction in benefits for older long-tenure workers, you'll see more and more of these executive protests," says David Certner, senior coordinator for economic issues at the American Association for Retired Persons. "The managers are the first to know about the changes and most likely to understand the impact."

Pension reductions commonly occur in mergers and acquisitions or, as in Prudential HealthCare's case, in divestitures. But companies are also freezing pension benefits, or switching to cash-balance plans, which provide smaller benefits for longer-term workers. Close to 400 large employers have converted to these newstyle plans, and benefits experts predict that pension cuts -- through conversions, freezing, or other means -- will accelerate as baby boomers age.

Figuring out how one's pension has been changed isn't always easy, which in the past has made it difficult for employees to compare notes. But that may be changing with the growing awareness of how pension conversions can affect benefits, and with modern office tools such as electronic mail and Excel.

The managers at the Prudential HealthCare unit, for example, were initially flummoxed about the impact on their pensions. There wasn't any mention of how people in their situation would be treated under the plan. As "vested terminators" their pensions would be reduced by special factors, which also weren't included in the employee handouts. And this year the Prudential employees didn't receive their annual benefits statement, which includes projections of their benefits, so they couldn't make any estimates about how they might be affected.

A spokesman says the statements didn't go out because the company is in the process of changing its payroll system.

Nevertheless, executives with actuarial and underwriting experience "cracked the code," as one put it, and figured out that someone like Mr. Condon, an 18-year veteran, would take a 40% hit. "What I cannot understand is how after so many years of service they can change the pension like that," he says.

The answer, which the employees were not aware of, is that pension laws allow companies that spin off workers to treat the pension benefit as though the employees had quit. This means that many lose the value of their early-retirement subsidies, which they otherwise would keep if the pension plan was being spun off to the new company with them.

By keeping the pension plan -- but spinning off roughly a quarter of the work force -- Prudential still will be able to retain the $2 billion in surplus. With lower liabilities, the pension plan will be able to generate additional pension credits that boost earnings, just as the company is planning to switch from being a mutual to a stock company.

Furious executives sent a frenzy of e-mails between Prudential offices in Texas, Florida, California and New Jersey. Some were inspired to write their Congressmen; a few e-mailed chairman Arthur Ryan to detail their complaints; one requested the human-resources department to show them illustrations of how the pension cuts would affect hypothetical employees "Arthur" and "Ryan."

The fuss was coming at a sensitive time: the unit's sale hasn't been fully approved by regulators, and the company wasn't eager for bad publicity. On Monday, Prudential sent out word that informed departing employees that they wouldn't lose their subsidies.

Asked if the executive pressure led to a change of heart, a Prudential spokesman says, "We heard from employees and listened to them, but this decision was under consideration for some time. . . . We've been motivated to do the right thing all along."

At other companies, executive activism is directed at the cutoffs companies establish when they switch from traditional pensions to cash-balance type pensions. People over a certain age are often allowed to remain in the old plan; people who miss the boat by a few years can see their pensions droop by 30% or more.

After New York utility Niagara Mohawk Power switched pension plans last year, managers started off with polite phone calls; then they contacted lawyers; finally, one went to Washington, D.C., to testify before a Senate Finance Committee hearing about pensions. This attracted media notice from USA Today and "CBS Evening News," which covered the growing pension dispute. Finally, the company then said it would allow anyone whose age and service totaled 50 as of last Dec. 31 the option of staying in the old pension plan. Previously, employees had to be age 45 with 10 years of service to be "grandfathered" under the old plan -- a requirement that left many long-service employees in their 30s and 40s out in the cold.

"Our intention was never to hurt any employees," says a Niagara Mohawk spokesman. He says the company expanded the group after it became more certain about its financial situation.

A similar revolt at Junior Achievement, an economic-education organization based in Colorado Springs, Colo., got the attention of a different group of outsiders -- the organization's board. When managers figured that some of their pensions could be cut by as much as 60% following the conversion to a "pension-equity plan," they took their complaints to members of the board, including General Robert T. Herres, the chairman and chief executive officer of USAA. The board called for a review of the plan by a third party, and is likely to modify some provisions in September, says a company spokesman.

One of the most dramatic executive uprisings occurred in fall 1997, when accounting firm Deloitte Touche proposed switching to a cash-balance plan. Faced with a sea of angry actuaries and accountants, the firm relented and allowed all existing employees to remain in the old plan; only new hires would be required to join the new cash-balance plan.

Companies may be listening to what their managers are saying in part because employers are still feeling their way with the new pension programs, and thus are open to suggestions. Southern New England Telecommunications was going to cut the interest credit it pays on employee cash-balance accounts to 3% from 7% in January. After angry managers complained, the company instead agreed to adopt the 30-year Treasury rate. Now, instead of receiving only 3% "interest," employees will get something that's similar to a bond's rate of return.

A spokeswoman acknowledges that managers expressed concern, and that "simultaneous to that, we promised to look at the rate, and made the decision to make the change."

Of course, not all companies are swayed by objections to pension changes. Employees of International Business Machines Inc. have complained about the cash-balance plan the company is adopting today, without persuading the company to revert to the old plan.

IBM workers yesterday took their campaign to Washington to enlist the support of public officials. At a news conference, Dave Lovelace, 52, an IBM employee from San Jose, Calif., said that he and his wife, who have 29 and 21 years with the company respectively, will see their pensions fall 40%.

Congressman Bernard Sanders (Ind., Vt.) whose largest private employer is IBM, says, "It seems extremely unfair IBM is pulling the rug out from under employees who have worked at the company for 20 and 30 years."

A spokesman says the pension changes will go into effect as scheduled. "We recognize that some of our employees are unhappy about changes we're making to the plan and we regret that. But the overwhelming majority of employees have been supportive of these changes. Bottom line: we have to do what we have to do to remain competitive in this industry."

NOTES:
PUBLISHER: Dow Jones & Company

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Interoffice Memo

Date: March 17, 1998

To: Barry Wiksten
Mike Monroe

From: Denise M. Hill, Human Resources Communications, TL17A

Telephone: 215.761.6183
Facsimile: 215.761.5510

Subject: Retirement Plan Change Communications

For your information, attached are DML's comments on the retirement plan communications survey results.

Interoffice Memo

RECEIVED
MAR 1 2 1998
G. T. MEYN

CIGNA

Date: March 9, 1998
To: HR Officers

From: Gerald T. Meyn, TL17M

Telephone: 215.761.2729
Facsimile: 215.761.5524

Subject: Retirement Plan Survey

Attached are the results of the survey which accompanied retirement plan information sent to employees in December.

The communications were very successful in establishing a basic understanding of the new plan with employees. Unlike some employers instituting these plans, we have avoided any significant negative reaction from employees. Our big opportunity is to generate additional positive reaction to the plan changes. The Total Comp Report gives us our next chance to accomplish this goal.

The sample size, 425 returned surveys, is relatively small, but the results are similar to the information we have collected in focus groups and informal discussions and is consistent with anecdotal information collected by Signature Benefits Services.

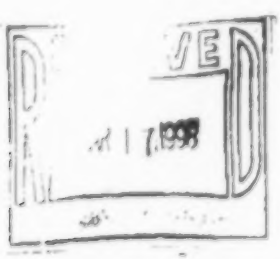
We will be monitoring any change in attitudes following receipt of the Total Comp Statement.

I'd be interested in your reaction. If you have any question or comments, please let me know.

Regards,

cc: DML
DML Direct Reports

EB014-98



Retirement Plan Communications Survey

Survey Questions	Agree	Neutral	Disagree	Don't Know
I thoroughly read the retirement communications I received	92%	5%	3%	–
Communications about the program were written clearly	89%	6%	5%	–
I have the information I need to understand CIGNA's retirement benefits.	83%	9%	8%	–
The Company seems committed to giving me comprehensive information about retirement benefits	88%	7%	5%	–
On the whole, I feel good about the retirement program changes	56%	33%	9%	2%
I believe CIGNA's retirement program will give me sufficient retirement income by age 65.	45%	28%	20%	7%
It's been easy to get answers to my questions.	48%	32%	5%	15%

SUPPD1567

Understanding	Well	Somewhat	Poorly
SIP			
Fixed Match	97%	2%	1%
Variable Match	77%	19%	4%
Investment Choices	85%	13%	2%
Account Balance Pension			
Opening Balance	57%	31%	12%
Benefit Credits	57%	31%	12%
Interest Credits	58%	29%	13%
Lump Sum Option	75%	16%	9%
DB Pension			
Benefit Formula	76%	17%	7%
Early Retirement Options	77%	17%	6%
Payment Options	67%	26%	7%

B Sherbondy

RECEIVED

MAR 1 2 1998

G. T. MEYN

Interoffice Memo

CIGNA

Date: March 9, 1998

To: HR Officers

From: Gerald T. Meyn, TL17M

Telephone: 215 761 2729

Facsimile: 215 761 5524

Subject: Retirement Plan Survey

Attached are the results of the survey which accompanied retirement plan information sent to employees in December.

The communications were very successful in establishing a basic understanding of the new plan with employees. Unlike some employers instituting these plans, we have avoided any significant negative reaction from employees. Our big opportunity is to generate additional positive reaction to the plan changes. The Total Comp Report gives us our next chance to accomplish this goal.

The sample size, 425 returned surveys, is relatively small, but the results are similar to the information we have collected in focus groups and informal discussions and is consistent with anecdotal information collected by Signature Benefits Services.

We will be monitoring any change in attitudes following receipt of the Total Comp Statement.

I'd be interested in your reaction. If you have any question or comments, please let me know.

Regards,

Jerry

cc: DML
DML Direct Reports

3/18/20[illegible]

per GTM — "Pension Rehires

GTM reaction to DWD proposals

(1) 11/1/98 → 2000 rehires
revalue there OAB
using "Most Valuable Retage
eg age 55

(this ~~[illegible]~~ more bens to these people ie not discriminating)

(maybe use only if actually eligible @ 1st ~~[illegible]~~ eg met ERET @55 rules

(or at term give them best of both plans)

(2) Future rehires
A+B

To: John Hess
For our next discussion

Status Report on KSOP Feature in 401(k) Plan

Objective: Respond to Tax Department request to structure 401(k) Plan so that CIGNA can extract a deduction for dividends paid on CIGNA stock within the Plan. The plan is formally a KSOP (ESOP in a 401(K) Plan) which means the plan has two discrete segments.

Advantages: Primary advantage is financial because CIGNA could take up to a $700K tax deduction on a minimum of $2M dividends. Actual deduction is dependent upon whether CIGNA requires a cash distribution or offers a voluntary distribution. If a voluntary plan is offered, we anticipate a maximum deduction of $100K.

only or match? : 1.67M shares

Competitive View:

- No competitive need as less than 15% of Fortune 500 companies offer this feature
- Where offered, companies...
  - generally request an IRS private letter ruling
  - generally require distributions as dividends are paid
  - permit employees to offset the dividend with an additional deferral which is also matched by the employer (giving something back)
  - place no restriction on dividends even for participants who have not earned full vesting rights
  - implement the change with an improved match or vesting schedule particularly when the distribution is mandatory

like what 100% 1st 1% 50%

Framework: no oth on dividends paid

- Requires CR&IS to establish a separate plan to handle all company contributions (accumulated and future)
- Each plan is subject to separate discrimination tests
- If employees can reallocate additional deferrals to offset the cash distribution, payroll interfaces will be needed as well to handle city, state and FICA taxes. Simplified 2040 EZ filing is not available to lower-paid employees.
- Payments go to current and past employees reportable as dividends.
- CR&IS cost is under $100K to install with deduction modifications. However, ongoing distribution costs may be as high as $120K unless Payroll can handle the process.

1040

keeping SF<45 out would ease 1040 EZ issue.

Is this an issue?

CR&IS problem w/ distributing dividends - what? - tax - mechanics

Next Steps:

- Complete discrimination testing to determine if 100% of company contributions can be directed to the KSOP or only a portion. Additional research on feasibility will be delayed until the financial components have been measured.

ksop1-3/9/00

898a

DO4647

Status Report on 401(k) Restoration plan

Objective: Permit all highly-compensated employees with additional deferral opportunities at attractive market returns. Coordinate with 401(k) Supplemental Plan so that annual benefits would also be deferred instead of distributed immediately each year.

Resources: CIGNA Legal and Tax, William M. Mercer, Towers Perrin

who? current deferred comp + supp

Competitive View:

- 51% of Fortune 100; 23% of Fortune 500 frequently an expansion of existing deferred compensation plans
- Plans are limited to top 2% -4% of population. Often structured as follows:
  - Higher matching contribution (often about 25% and with some restrictions)..... 21%
  - Match on variable pay (when not done in 401(k) plan) 14%
  - Full replacement for all qualified 401(k) plan rights 12%
- Unfunded.....57% (although 10% of these use COLI or VGUL) or Springing Rabbi Trust..... 31%
- Offer a range of investments with a minimum of 3 excluding company stock.....71%
- Permit loans and in-service withdrawals with 10% penalty..... 62%
- Distributions most commonly lump sum or up to 10 annual installments

Framework:

- Requires a separate election from qualified 401(k) plan to enroll, take withdrawals/loans, although investment elections can be coordinated. Preliminary administrative cost estimates are:
  - CR&IS start-up $75,000 to coordinate plans + Ongoing $300,000 annually to maintain accounts

Financial Impact: (assumes employee average deferral is 5% of pay)

- CIGNA loses immediate annual tax deduction but that is offset by the alternate use of cash for an average of $1.5M
- Anticipated annual cost to offer equity market rates is $500K

Other Alternative to Explore:

- Expand current Deferred Compensation Plan to handle deferrals of current Supplemental Cash payments
- Deferrals can be mandatory or voluntary; anticipate minimal savings from deferrals

401krestoreA

899a

Rehired Employees - Pension Issues

Issue: Beginning January 1998 all rehired employees are transferred to the new Cash Balance Pension Plan. Their former benefits are converted to a lump sum at then current GATT rates. Employees in the old Tier 1 (2%) Plan lose the potential ultimate value of that Qualified and Supplemental plans' early retirement subsidy. Employees in the 1.67% plan do not have that potential loss.

Impact: The potential reduction in accrued benefit averages 2% to 15% depending on when the employee ultimately retires. This has been a potential barrier to rehiring several key mid-management talent.

Demographics of Affected Employees:

- CIGNA rehired 2,600 former employees in 1998 and 1999
- 31% of these rehired employees terminated again within 6 to 14 months of their rehire date. They leave with a cash payment not previously available to them in the old plan.
- 480 employees (17%) were formerly from Tier 1 and show the same termination pattern.

Possible Solutions:

Alternatives	Advantages	Disadvantages
Do nothing on broad scale	Offers maximum flexibility to handle individual cases where recruitment is important. We can require minimum future service requirements. Limits possible pension expense increase of $800K annually to offer subsidies No exposure to litigation over our prior practice	May inadvertently set a barrier to rehiring needed talent (unless HR trained to identify likely affected candidates). Rehires see no benefit improvement for several years. Mid-level employees can't receive SERPs so short term deferred cash payments or options would be necessary.
Offer to freeze Tier 1 benefit upon rehire to anyone rehired after 1/1/98	Preserves former Tier 1 subsidies Does not produce larger short-term benefits to employees who resign shortly after rehire Ideal for employees rehired in late 40's	Previous rehires may question our prior practice; some possible exposure if employees question our motives. Some may prefer cash balance. $250K increase in annual expense Unattractive to employees in early career as they lose purchasing power

pmDWD - Do what w/ this?
- DDLR says okay to do whatever w/ prior rehires
- DWD thinks just SERP going forward

Alternatives	Advantages	Disadvantages
Offer to freeze Tier 1 benefit to those rehired after a set future date. ***Requires further analysis on possible discrimination***	Preserves former Tier 1 subsidies Does not produce larger short-term benefits to employees who resign several years after rehire Ideal for employees rehired in late 40's who are closer to retirement	Limited exposure to a 1998-99 rehired employee requesting similar treatment $80K increase in annual expense rising to $250K after several years
Convert Tier 1 benefit at favorable interest subsidy similar to our initial conversion process	Offers a close replacement of Tier 1 values at retirement age Easiest approach to administer Offers some protection should regulatory review of cash balance conversions become severe.	$800K increase in annual expense Offers significant excess benefits converted to immediate cash to those who leave shortly after re-hire date Previous rehires may question our prior practice; some possible litigation
Convert Tier 1 benefit at favorable interest subsidy similar to our initial conversion process to those rehired at a set future date ***Requires further analysis on possible discrimination***	Offers a close replacement of Tier 1 values Less likely to raise questions from 1998-99 rehired employees Easiest approach to administer Offers some protection should regulatory review of cash balance conversions become severe.	$250K increase in annual expense rising to $800K after several years Offers significant excess benefits converted to immediate cash to those who leave shortly after re-hire date

CIGNA Pension Plan

ALL-STATE LEGAL
DEFENDANT'S EXHIBIT
505

Table of Contents

As used in this material, **CIGNA** refers to CIGNA Corporation and its subsidiaries that participate in the Plan.

Certain **CIGNA** employees have a pension plan benefit different from the plan described in this summary. They are people who:

- participated in the CIGNA Pension Plan before 1989, **unless**:
  - the plan they participated in was not merged into the CIGNA Pension Plan until after 1988 (for example, CIGNA Healthplans and Equicor);
  - they left **CIGNA** before 1998 and were not rehired after 1997; or
  - their combined age and years of credited service was less than 45 years on December 31, 1997; or
- were hired by **CIGNA** after 1988, but left before 1998.

Those who have different pension benefits receive a different plan summary.

Introduction 1
- Eligibility 1
- Understanding Service 1
- Those Hours Add Up 2
- Break in Service 2

How Your Account Grows 3
- Benefit Credits 3
- Interest Credits 4

Keeping Track of Your Account 4

When Benefits Are Paid 5

How Benefits Are Paid 5
- Normal Payment Methods 5
- Optional Payment Methods 5
- About Taxes 6

Life Events 7
- If You Take an Unpaid Leave of Absence 7
- If You Take a Paid Leave of Absence 7
- If You Are on Short-Term Disability 7
- If You Are on Long-Term Disability 7
- If You Transfer to or from Another CIGNA Company 7
- If You Leave CIGNA 8
- If You Are Reemployed by CIGNA 8
- If You Die Before Your Benefits Commencement Date 9
- If You Die After Your Benefit Commencement Date 9

Administrative details 10
- What Do I Do If 10
- I Have a General Question About My Pension Plan? 10
- I Need to Change My Personal Information? 10
- I Need to Elect or Change My Beneficiary? 10
- I Want an Estimate of My Pension Plan Benefits? 10
- I Want an Estimate of My Social Security Benefits? 10
- I Want to Retire Soon and Need Some Counseling? 11
- I Want to Begin My Pension Benefits? 11
- I Want to Begin My Social Security Benefits? 11
- What Should My Family Do If I Die 11
- I Have Questions About or Need Copies of the Summary Annual Report (SAR), Form 5500, or Plan Document? 12
- I Have General Questions About My Other Benefits or Retirement? 12

Other Important Information 13

Glossary 18

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Introduction

CIGNA provides a competitive pension that grows with you over your **CIGNA** career. Combined with the CIGNA 401(k) Plan, Social Security benefits and your personal savings, the CIGNA Pension Plan can help secure your financial future.

The CIGNA Pension Plan is an "account balance" plan. With this type of plan, a specific amount is credited to a pension account for you periodically — similar to a savings plan. The best part is that **CIGNA** does the saving for you. You make no contributions of your own to the Plan. As your age, company service and pay increase, the dollar amounts credited to your account increase as well.

You'll receive a quarterly statement of your Pension Plan account balance. What's shown will be the amount of accumulated credits in your account. You'll see that amount continue to grow every year you are with **CIGNA**. Once you have five years of service, you'll be eligible to receive pension benefits when you leave — that is, you'll be vested in your plan account.

Your Pension Plan Features...

- A secure benefit, funded solely by **CIGNA**, with no investment risk
- An account in your name that grows each year with benefit and interest credits
- Automatic participation on your first day of employment
- The ability to earn retirement benefits throughout your career
- The ability to take your vested account balance with you if you leave before retirement

Please read this summary carefully. It's a good idea to share it with members of your family, too. Words in teal, bold type are defined in the glossary beginning on page 18. If you have any questions, please call the CIGNA Retirement Service Center at 1.800.224.4624.

Eligibility

You are automatically a Pension Plan participant if you work for **CIGNA** — even if on a part-time or temporary basis. You don't need to enroll. You begin to participate automatically on the first day you are eligible.

Understanding Service

Your service is a key factor in determining your benefits. Service is counted in years and hours. You earn a **year of service** for each calendar year in which you have at least 1,000 **hours of service**. **CIGNA** counts your years of service in two ways:

- ***Vesting Service*** is used to determine your vesting status. After five years of vesting service, you earn a guaranteed right to your pension benefit.
- ***Credited Service*** is used to determine whether you are eligible to receive benefit credits for a particular calendar year, and if so, how many. Once you receive credit for a **year of service**, you generally don't lose it.

Vesting

Being vested means you are entitled to receive a benefit from the Plan — even if you leave **CIGNA** before retirement. You cannot forfeit a vested benefit. You are vested once you have five years of **vesting service**, with at least 1,000 **hours of service** each year. If you leave **CIGNA** before you have five years of **vesting service**, you forfeit your benefits.

If you were in the CIGNA Pension Plan before 1998, you've received credit for your prior years of **vesting service** and **credited service**.

Did you know that service with a non-participating **CIGNA company** counts toward **vesting service**? (See **If You Transfer to or from Another CIGNA Company** on page 7.)

Those Hours Add Up

An **hour of service** is generally any hour for which you receive pay, whether or not you are actually working (for example, a vacation day counts toward your service). If your hours add up to at least 1,000 in a calendar year, you earn a **year of service** for that year.

Break in Service

If you work fewer than 500 hours in a year, that year will be considered a **break in service**.

- *If you're not vested* and you have a break in service for five consecutive years, you'll lose your account balance. You'll have to start earning **vesting service** all over again. If your break is less than five consecutive years, your prior vesting service and your account balance will be restored (though you will not receive interest credits for the period of your break in service).
- *Once you're vested*, you will not lose your account balance or prior service, no matter how long your break in service. You also receive interest credits (see page 4) for the period of the break in service.

Generally, for calculating your **points**, you will not lose your accumulated **credited service** no matter how long your break in service, with one exception: If you participated in the CIGNA Pension Plan before 1998, but left CIGNA before becoming vested, you will lose your prior credited service if you lose credited service under the pre-1998 rules of the Plan.

How Your Account Grows

An account is set up in your name to record the accumulation of ongoing benefit credits and interest credits. Each dollar's worth of credit is a dollar of retirement benefits payable to you after you are vested. Under the plan, your benefit will grow steadily throughout your career as credits are added to your account.

If you were an employee on December 31, 1997, or rehired after 1997, any benefit you earned under the Pension Plan through December 31, 1997 was converted to an opening account balance in this Pension Plan. The opening balance was equal to the lump sum value of the pension benefit you earned through December 31, 1997.

Your account balance grows in two ways — annual benefit credits and quarterly interest credits.

Benefit Credits

For each year in which you earn a year of **credited service**, CIGNA will add benefit credits to your account equal to a percentage of your annual **eligible earnings**. The percentage will depend on your points, which are the sum of your age and credited service on January 1 of each year. Benefit credits are made according to the chart below.

The Pension Plan is designed to work together with Social Security. As the chart shows, the plan provides a greater benefit credit for the portion of your **eligible earnings** above the Social Security "integration level."

Your Benefit Credits

Your Points (your age plus credited service at the beginning of the year)	Credit (as a percentage of your eligible earnings)	
	For earnings below the integration level	For earnings above the integration level*
Under 35	3%	4.5%
35 to 44	4%	5.5%
45 to 54	5%	6.5%
55 to 64	6%	7.5%
65 or more	7%	8.5%

* *The integration level is $34,000 in 1998 and 50% of the Social Security taxable wage base thereafter.*

The greater benefit credit for earnings above the integration level reflects the fact that there are no Social Security retirement benefits earned for income above the taxable wage base. Neither you nor **CIGNA** pays Social Security retirement taxes on your income above the Social Security taxable wage base, so **CIGNA** shares some of these tax savings with you through this increased credit.

Interest Credits

Your account will also grow through interest credits.

The annual interest rate will equal the yield on 5-year Treasury Bonds as of November of the previous calendar year, plus 0.25 percentage points. The annual interest rate will not be less than 4.5% or greater than 9%. These interest rates are consistent with guidelines established by the IRS for account balance plans.

CIGNA will add interest credits to your account each quarter until the month before your benefit commencement date.

Examples of Annual Benefit Credits

Eligible Earnings	Annual Benefit Credits				
	Less than 35 points*	35 to 44 points*	45 to 54 points*	55 to 64 points*	65+ points*
$30,000	$900	$1,200	$1,500	$1,800	$2,100
$50,000	$1,740	$2,240	$2,740	$3,240	$3,740
$70,000	$2,640	$3,340	$4,040	$4,740	$5,440
$100,000	$3,990	$4,990	$5,990	$6,990	$7,990
$150,000	$6,240	$7,740	$9,240	$10,740	$12,240

*Assumes a plan integration level of $34,000.

Keeping Track of Your Account

To help you keep track of your account growth, **CIGNA** will send you account statements four times a year. Each statement will show benefit credits and interest credits added to your account and the value of your account at the end of each period.

Benefit and interest credits will be added to your account statement quarterly. Interest credits will be calculated on your account balance before benefit credits are added. The quarterly reporting of benefit credits (and related interest credits) is merely a projection for the current year until you actually earn another year of **credited service**.

You continue to earn quarterly interest credits until the month before your **benefit commencement date**, regardless of whether you are eligible for further benefit credits.

When Benefits Are Paid

You can receive your full vested Pension Plan benefit when you leave **CIGNA** for any reason.

Because the Plan is a retirement plan, the IRS imposes a 10% excise tax on certain early distributions. (That's in addition to normal federal income tax — see **About Taxes** on page 6.) However, this 10% tax will **not** apply if:

- The distribution is made after you reach age 59½;
- The distribution is made after you terminate employment in the year you reach age 55 or later;
- The distribution is made due to your death or disability;
- You roll over your distribution to an IRA or another qualified plan;
- The distribution is paid to you as equal (or almost equal) payments over your and/or your beneficiary's life (or life expectancies);
- The distribution is made to your spouse, child or other dependent, as required under the terms of a qualified domestic relations order; or
- The distribution is to pay for unreimbursed medical expenses, as defined by the IRS.

If you leave CIGNA before age 65, you may keep your account balance (if more than $5,000) in the Plan and continue to receive interest credits until you request a distribution or reach age 65.

(Also see **If You Die Before Receiving Benefits** on page 9.)

How Benefits Are Paid

If you are vested when you leave **CIGNA**, you'll receive your benefit in the **normal payment method**, unless you choose an optional method of payment. The plan allows you to pick the payment method best suited to your situation.

If your account balance is $5,000 or less, your benefit will automatically be paid in a lump sum as soon as possible after your termination date. Once your benefit payments begin, you cannot change your benefit payment method.

Normal Payment Methods

If you're single — Starting at age 65, monthly payments will be paid only to you for your lifetime. When you die, payments end. This is called a **Single Life Annuity**.

If you're married — Starting at age 65, reduced monthly payments will be made to you for your lifetime. If your spouse outlives you, he or she will receive monthly payments, equal to 50% of the amount you had been receiving, for the rest of his or her lifetime. This is called a **50% Joint and Survivor Annuity**.

Your Eligible Spouse

If you're legally married when your pension starts, your spouse is eligible for survivor benefits — unless waived — if you die first. (See **Spouses' Rights** on page 14.)

Optional Payment Methods

If you don't want to receive your benefit by the **normal payment method**, you may choose one of the following payment methods:

Lump Sum — You receive a single lump sum cash payment equal to your account balance.

Single Life Annuity — Monthly payments will be paid to you for your lifetime only. When you die, payments end.

Single Life Annuity with cash refund — This option is similar to the single life annuity except that, if you die before you have received the amount of your account balance in monthly annuity payments, the difference between your account balance and the amount you have received in annuity payments will be payable to your beneficiary in a lump sum. For example, if your account balance was $100,000 when you retired and you had received $75,000 worth of monthly annuity payments at your death, your beneficiary would receive a lump sum of $25,000. To purchase this added protection, your monthly payments under this option will be less than the monthly payments under a single life annuity with no cash refund.

50% Contingent Pensioner Annuity — This option is similar to the **normal payment method** for married participants, except that you may name anyone you wish as your beneficiary.

100% Contingent Pensioner Annuity — This option is similar to the 50% contingent pensioner annuity, except that the monthly payments you will receive will be smaller and the payments your beneficiary receives after your death will equal 100% of your payments, rather than 50%.

If you're married and elect an option other than the 50% or 100% contingent pensioner annuity with your spouse as beneficiary, federal law requires that you must have the written, notarized consent of your spouse. (See **Spouses' Rights** on page 14.)

The following chart shows benefit amounts under the normal and optional payment methods for a **CIGNA** employee retiring at age 62, with an account balance of $200,000.

About Taxes

Plan payments are subject to federal taxes when you receive them. Income and inheritance taxes on Plan payments vary by state and country.

If you elect this method of payment...	You can receive a monthly benefit of...	After your death, your beneficiary receives a monthly benefit of...
Normal		
• Single	$1,561 for life	$0
• Married	$1,458 for life	$729 for life*
Optional		
• Lump Sum	One-time payment of $200,000	$0
• Single Life Annuity w/Cash Refund	$1,486 for life	Any remaining account balance in a lump sum
• 50% Contingent Pensioner Annuity	$1,458 for life	$729 for life*
• 100% Contingent Pensioner Annuity	$1,368 for life	$1,368 for life*

6.8% interest rate is used in this example.

* Assumes that beneficiary is age 62.

Life Events

The CIGNA Pension Plan is designed to support you during the different stages and events of your life. Here's how your benefit is affected by such life events as your disability, approved leave of absence, termination, transfer, re-employment or death.

If You Take an Unpaid Leave of Absence

If you take an approved unpaid leave of absence, your normal scheduled work hours will continue to count toward **credited service** and **vesting service** (see **Understanding Service** on page 1). **CIGNA** will continue to add benefit credits to your account for up to six months following the month your leave began (but not after you terminate employment with **CIGNA**). Benefit credits will be based on your base salary at the time your leave begins, plus any other **eligible earnings** actually paid to you during this six-month period.

Upon your return from a qualifying ***military leave of absence***, benefit credits will be added to your account for the time you were gone, to the extent required by federal law.

Your account continues to earn quarterly interest credits until the month before your **benefit commencement date**, regardless of whether you are eligible for additional benefit credits.

If You Take a Paid Leave of Absence

If you take an approved paid leave of absence, your normal scheduled work hours will continue to count toward a year of **credited service** and **vesting service** (see **Understanding Service** on page 1). **CIGNA** will continue to add benefit credits to your account during your absence, for up to six months. Benefit credits will be based on your **eligible earnings** during this six-month period. Your account continues to earn quarterly interest credits until the month before your **benefit commencement date**, regardless of whether you are eligible for additional benefit credits.

If You Are on Short-Term Disability

If you are disabled and eligible for CIGNA Short-Term Disability Plan benefits, **CIGNA** will continue to add benefit credits to your account based on your salary at the time your disability began, plus any other **eligible earnings** actually paid to you during the period you receive short-term disability benefits. Your account continues to earn quarterly interest credits until the month before your **benefit commencement date**, regardless of whether you are eligible for additional benefit credits. Your normal scheduled work hours will continue to count toward **credited service** and **vesting service** (see **Understanding Service** on page 1).

If You Are on Long-Term Disability

If you are disabled and eligible for CIGNA Long-Term Disability Plan benefits, your benefits credits will stop until you return to work but interest credits will continue. Your normal scheduled work hours will continue to count toward **credited service** and **vesting service**.

If You Transfer to or from Another CIGNA Company

If you transfer between two companies that participate in this Plan, you'll continue to earn **credited service** and **vesting service** and your benefit credits and interest credits will continue without interruption.

If you transfer from a **CIGNA company** that does not participate in this Plan to one that does, you may be vested. **Vesting service** counts for non-participating CIGNA companies, too, so if you have five years of service with any CIGNA company, you've earned a vested right to a pension benefit. You can now begin earning **credited service** and benefit credits and interest credits under the Plan. (See **Understanding Service** on page 1.)

f you transfer from a **CIGNA company** that **does** participate in this Plan to a CIGNA company that **does not**, you'll continue to earn **vesting service**, and interest credits will be added to your account. However, you will not continue to earn **credited service** and no benefit credits will be added to your account.

If You Leave CIGNA

If you leave **CIGNA** and are vested, you are entitled your plan benefits right away.* You may:

- receive an after-tax, lump sum payment or roll over the full amount into an individual retirement account (IRA) or your new employer's qualified retirement plan;
- take your distribution in another payment method (the IRS imposes additional taxes on certain early distributions — see **When Benefits Are Paid** on page 5); or
- keep your account balance (if more than $5,000) in the Plan, where it will continue to earn interest credits until your benefit start date or you reach age 65.

If You Are Reemployed by CIGNA

If you leave **CIGNA** and later return, you'll participate in the Plan if the company that rehires you participates. See **Break in Service** on page 2 for an explanation of how an interruption in your **CIGNA** employment may affect your **vesting service** and plan benefits.

*If you were **not** vested when you left*, and your **vesting** service and account balance are restored when you return, **CIGNA** will again add your previous benefit credits and interest credits to the same account. If your vesting service and account balance are not restored when you return, you'll start a new account.

If you were vested when you left, quarterly interest credits were added to your account during your break in service. When you return to CIGNA, both benefit credits and interest credits will again be added to your account. But if you've received any benefits from the Plan, you'll have a new account when you return.

*If you were in the **old Plan** when you left*, the pension benefits you earned will be converted to an opening account balance in the this plan when you return. The conversion formula used is based on guidelines established by the federal government for valuing pension benefits. If you have questions about the conversion formula, you may call the CIGNA Retirement Service Center at 1.800.224.4624.

Your benefits will not be converted to the new Plan, but maintained in the **old plan** , if . . .

- you are age 65 or older when you return; or
- you are already receiving a pension under the **old plan** (see box below);

If you are receiving pension benefits when you return and you are . . .

. . . younger than 65	. . . 65 or older
Your monthly pension payments will stop for any calendar month in which you work 80 hours or more. (Pension payments will resume following a month when you work less than 80 hours a month.) You will earn a completely separate benefit for your future service.	Your pension payments will continue and you'll earn a completely separate benefit (based on your prior credited service) for your future service.

* Unless you are working for an affiliate or subsidiary outside the United States.

If You Die Before Your Benefit Commencement Date

If you're married, your spouse will automatically be your Plan beneficiary, unless he or she has consented in writing, before your death, to your naming someone else.

If you die after becoming vested but before your **benefit commencement date**, your account balance will be paid to your beneficiary. If your account balance is more than $5,000, your beneficiary may choose a lump sum or a single life annuity. If your account balance is $5,000 or less, your beneficiary will be paid in a lump sum.

If the beneficiary is your surviving spouse, he or she may keep your account balance in the plan until you would have reached age 65. A beneficiary other than your spouse must begin to receive a single life annuity by the end of the first calendar year after the year of your death or receive a lump sum payment by the end of five calendar years after the year of your death.

Interest credits will be made to the account until the month before your beneficiary's **benefit commencement date**.

If you have no surviving spouse and you have not named a Plan beneficiary, your benefit will be paid in a lump sum to the first available of:

- Your surviving natural and adopted children (in equal shares)
- Your surviving parent(s) (in equal shares)
- Your estate

(See **What Should My Family Do if I Die?** on page 11.)

Use JetForms to print out a Beneficiary Designation Form.

Here's How:

- Click on the **JetForm Filler™** icon, then click the
  - **Use Form** button at the top left of the screen, then
    - **!GENERAL USAGE FORMS**, then
      - **!Benefit Forms**, then
        - **Pension Plan Beneficiary Designation**

. . . and print!

If You Die After Your Benefit Commencement Date

If you die while receiving a plan benefit paid as a...	Your beneficiary will receive...
Lump Sum	no benefits payable after your death.
Single Life Annuity with a cash refund	a lump sum that might be due (see page 6).
Single Life Annuity	no benefits payable after your death.
50% Contingent Pensioner Annuity	payments for the rest of his or her life, but only if he or she survives you.
100% Contingent Pensioner Annuity	payments for the rest of his or her life, but only if he or she survives you.

Administrative Details

Do you have questions about your retirement? Call the CIGNA Retirement Service Center at 1.800.224.4624, 8:00 a.m. to 8:00 p.m., Eastern time.

What Do I Do If...	You Should...
I Have a General Question About My Pension Plan?	Call the Retirement Service Center. They will be able to answer most questions when you call. If your question requires special research, they will give you an answer as soon as possible.
I Need to Change My Personal Information, such as: • *address* • *date of birth* • *name* • *status*	Notify your manager. It's important for your manager to receive this information first. Once he/she informs payroll of your change, your retirement plan records will be automatically updated.
I Need to Elect or Change My Beneficiary?	*Use JetForms (go to page 9 to see how), or call the Retirement Service Center.*
I Want an Estimate of My Pension Plan Benefits?	Call the Retirement Service Center. They will send you a Benefit Summary detailing your benefits and your options. Check your benefit amount carefully and call them if you have any questions.
I Want an Estimate of My Social Security Benefits?	Call Social Security at 1.800.772.1213 to request your Earnings and Benefits Estimate Statement. This will tell you the earnings Social Security uses to calculate your Social Security benefit. Check your earnings carefully and notify Social Security if they're not correct. You can visit their website at http://www.ssa.gov

What Do I Do If...	You Should... (Continued)
Want to Retire Soon and Need Some Counseling?	Contact Signature Benefits Services. Pre-retirement counseling can help you understand which benefits stop and which continue, your pension, retiree life insurance, retiree health care, Medicare and Social Security. Phone: Network 761.3539, 5.3539 or 1.800.551.3539. Fax: 215.761.5629 E-mail: Signature Benefits Services Benefits counselors are available to answer your questions, Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern time.
I Want to Begin My Pension Benefits?	Notify your manager and call the Retirement Service Center. When the Retirement Service Center receives formal notification of your termination date, they will send you a **Distribution Initiation Package** which will include a final calculation of your payment options and the necessary forms to start your benefit payments. This process may take from 30-90 days, so it is important to notify the Retirement Service Center of your plans as soon as you can.
I Want to Begin My Social Security Benefits?	Call Social Security at 1.800.772.1213 to request a Social Security retirement application as early as 6 months before you plan to retire. (Return the application at least 3 months before you plan to retire).
What Should My Family Do if I Die?	A family member or beneficiary should call Signature Benefits Services at 1.800.551.3539. Your spouse or beneficiary will be sent a Distribution Initiation Package which will include a final calculation of the death benefit and the necessary forms to initiate the payments. If there are no benefits payable, your family will be notified in writing.

What Do I Do If...	You Should... (Continued)
I Have Questions About or Need Copies of the Summary Annual Report (SAR), Form 5500, or Plan Document?	Call the Retirement Service Center. They will answer any questions that you have and will provide copies of the documents upon request.
I Have General Questions About My Other Benefits at Retirement?	Contact Signature Benefits Services. Phone: Network 761.3539, 5.3539 or 1.800.551.3539. Fax: 215.761.5629 E-mail: Signature Benefits Services Benefits Counselors are available to answer your questions, Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern time.

Other Important Information

Minimum Benefits

If you participated in the Pension Plan before 1998, your **old plan** benefits were converted to an opening account balance in this Plan. Your final Plan benefits cannot be less than your **old plan** benefits on December 31, 1997. If this minimum benefits rule applies to you, you'll be notified by the Retirement Service Center when you request a distribution.

Maximum Benefits

Federal tax laws impose certain limitations on the contributions and benefits under qualified retirement plans. For example, as of 1998, no more than $160,000 of your annual compensation may be taken into account when calculating benefit credits; and your annual Plan benefit (expressed in the form of an annuity starting at age 65) can't be over $130,000. CIGNA makes up for benefits lost due to these maximums through an unfunded, non-qualified plan called the CIGNA Supplemental Pension Plan.

Deferred Compensation

Compensation you defer under any CIGNA Deferred Compensation Plan cannot be considered **eligible earnings** under this Plan. However, it may be considered eligible earnings under the CIGNA Supplemental Pension Plan.

Change of Control Protection

Your Plan benefits are protected in a number of ways if there is a change of control of CIGNA Corporation.

For three years following a change of control, the Plan cannot be terminated. You must be allowed to earn benefit credits and interest credits if you remain employed and the rate at which you earn benefit credits (the **points** chart) cannot be reduced.

For five years following a change of control, no CIGNA company (or successor) can take any steps that would result in a reversion of any Plan assets to any CIGNA company (or successor) or a reduction in Plan assets (except by paying benefits and covering reasonable costs of the Plan). For example, the merger of the Plan into an underfunded pension plan of a successor to CIGNA Corporation would not be permitted.

If you are a CIGNA employee on the effective date of the change of control and your employment terminates (except for cause) during the following three-year period, you will receive a special benefit credit for your year of termination. The benefit credit will be a percentage of **eligible earnings** with an adjustment, calculated as follows:

1. Your eligible earnings will be your highest base salary in effect at any time between the date of the change of control and your termination date.

2. The percentage will be based on your **points** at date of termination. In calculating your points, you will be treated as having earned a year of **credited service** for the year of your termination (even if you leave before earning 1,000 **hours of service**).

3. The dollar amount resulting from the percentage of #2 multiplied by eligible earnings in #3 will be adjusted by being multiplied by the number of years (whole years and number of whole months in the twelfths) between January 1 of the year you terminate employment and the end of the three-year period beginning on the date of the change of control.

4. That result will be reduced by any benefit credit you actually earn for the year of your termination. The resulting special benefit credit will be added to your Plan account at the end of the month of your termination.

After a change of control occurs, these protections cannot be eliminated for five years. Before a change of control, CIGNA Corporation may change or even eliminate these protections.

IRS Approval

The Plan is subject to continuing approval of the IRS, and it may be necessary to change it from time to time to accommodate changes in the law or IRS regulations.

Spouses' Rights

Under federal law, your spouse may have rights to a Plan benefit. The law requires that if you are married:

- You must receive your Plan benefit as a 50% or 100% Contingent Pensioner Annuity and name your spouse as beneficiary, unless he or she agrees in writing to your election of another method of payment or another person as beneficiary.
- If you die before your **benefit commencement date** and after you are vested, your spouse must receive a death benefit unless you designated a different beneficiary and your spouse consents in writing before you die.

As a result, **you must have your spouse's consent** to:

- Elect a Lump Sum or Single Life Annuity; or
- Designate a beneficiary other than your spouse to receive a 50% or 100% Contingent Pensioner Annuity; or
- Designate a beneficiary other than your spouse to receive any preretirement death benefits if you die before your benefit payments begin.

To waive these benefits, you and your spouse must complete a form provided by the Plan office and have your spouse's signature witnessed by a notary public.

Assignment of Benefits

Except as required by law, your Pension Plan benefits may not be pledged, assigned or garnished in payment of any debts.

Qualified Domestic Relations Order (QDRO)

The Plan Administrator will comply with a Qualified Domestic Relations Order (QDRO). A QDRO is any court judgment, order, decree or approval of a property settlement agreement made under state domestic relations law. The order may relate to child support, alimony or marital property rights for a spouse, child or other dependent and may direct payment of all or part of your Plan benefit to another person.

Paying for Your Pension

Your Plan benefits are paid directly by the CIGNA Pension Plan Trust. The Trust contains money contributed over the years by CIGNA and investment earnings on those contributions. Money in the Trust is used solely to pay Pension Plan benefits and to cover certain Plan expenses.

Your account contains credits in the form of hypothetical dollars. It does not contain actual dollars. As plan benefits are paid to you, money is distributed to you (or your beneficiary) from the Trust.

The Trustee is CG Trust Company of Chicago. CG Trust Company is CIGNA Corporation subsidiary.

The Pension Benefit Guaranty Corporation (PBGC)

Benefits under this plan are insured by the Pension Benefit Guaranty Corporation (PBGC). Generally, if the Plan terminates without enough money to pay all benefits, the PBGC guarantees you payment of most vested normal retirement benefits, early retirement benefits and certain survivor pensions. However, the PBGC does not guarantee all types of benefits and the amount of benefit protection has certain limitations.

The PBGC guarantees vested benefits at the level in effect on the date of Plan termination. However, or if benefits have been increased within five years before Plan termination, the whole amount of the benefit increase may not be guaranteed. In addition, there is a ceiling on the amount of monthly benefit that PBGC guarantees, which is adjusted periodically.

For more information on PBGC insurance protection and its limitations, ask the plan administrator or the PBGC. Inquiries to the PBGC should be addressed to the Office of Communications and Public Affairs, PBGC, 1200 K Street, N.W., Washington, DC 20005-4026, or call the PBGC at 202-326-4000.

Appeal Process

You (or your beneficiary) file a claim for Plan benefits by completing and returning the forms in your Distribution Initiation Package (see page 11). If your claim for benefits is denied in whole or in part, you (or your beneficiary) will be notified in writing by the plan administrator within 30 days. This written notice will include:

- Specific reason(s) for the denial
- References to plan provision(s) on which the denial is based
- A description of any additional material or information needed to grant a claim
- Procedures for appealing the decision

You or your authorized representative may review all documents related to any denial of benefits. If you disagree with the plan administrator's decision, you have 60 days from the receipt of the original denial to request a review. This request should be in writing and sent to the plan administrator (see page 17 for the address). The claim will be reviewed, and you will be notified of the decision within 60 days. If special circumstances require more time for this process, you will be notified in writing no later than 120 days after the receipt of your request.

Continuation of the Plan

CIGNA expects to maintain this Plan indefinitely. However, CIGNA reserves the right to amend, modify or terminate the Plan at any time and for any reason. In general, no amendment or modification will reduce any benefit accrued to the date of amendment or modification. Future accruals of benefits may be modified, suspended or ended as a result of such a change. Any amendment or termination of the Plan will be by action of the Board of Directors of CIGNA Corporation, a committee of the Board, or a duly authorized officer of CIGNA Corporation.

If the Plan is ever terminated, affected participants will be immediately 100 percent vested in all benefits accrued to the date of the termination.

If the Plan Trust has insufficient assets upon termination of the Plan, Pension Benefit Guaranty Corporation (PBGC) insurance provisions will become effective. If the Plan Trust has excess assets, any excess assets beyond what are needed to purchase annuities to satisfy all benefit liabilities to participants and beneficiaries will be returned to CIGNA.

Not a Contract of Employment

Participation in the Plan does not imply a contract of employment between you and CIGNA. CIGNA's right to take disciplinary action against or terminate any employee, if necessary, is not affected by any provision of the Plan.

Statement of ERISA Rights

As a participant in the plan described here, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants are entitled to:

- Examine, without charge, at the plan administrator's office and at other specified locations, such as work sites, all plan documents, including insurance contracts, trust agreements and copies of all documents filed with the U.S. Department of Labor, such as detailed annual reports.
- Obtain copies of the plan documents and trust agreements and other plan information upon written request to the plan administrator. The administrator may make a reasonable charge for the copies.
- Receive a summary of the plan's annual financial report. The plan administrator is required by law to furnish each participant with a copy of summary annual reports.
- Obtain a statement telling you whether you have a right to receive a pension at your normal retirement age under the Plan and if so, what your benefit would be at normal retirement age if you were to stop working now. If you do not have a right to a pension, the statement will tell you how many years you have to

work to earn one. This statement must be requested in writing and is not required to be given more than once a year. The statement must be provided free of charge.

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of employee benefit plans. The people who operate your plans, called fiduciaries, have a duty to do so prudently and solely in the interest of you and other plan participants and beneficiaries.

No one, including CIGNA or any person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit or exercising your rights under ERISA.

If your claim for a benefit is denied in whole or in part, you must receive a written explanation of the reason for the denial. You have the right to have the plan administrator review and reconsider your claim.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the plan and do not receive them within 30 days, you may file suit in federal court. In such a case, the court may require the plan administrator to provide the materials and to pay you up to $110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the administrator.

If you have a claim for benefits that is denied or ignored, in whole or in part, you may file suit in federal or state court.

If it should happen that a plan fiduciary misuses the plan money or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor or file suit in federal court.

In the event of legal action, the court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees (for example, if the court finds your claim is frivolous).

If you have questions about the Plan, you should contact the plan administrator. If you have any questions about your rights under ERISA, you should contact your nearest area office of the Pension and Welfare Benefit Administration, U.S. Department of Labor, found in your local telephone directory, or the Division of Technical Assistance and Inquiries, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington D.C. 20210.

Name of Plan	CIGNA Pension Plan, Part B (Amended and Restated Effective January 1, 1998)
Type of Plan	Defined Benefit Pension
Plan Year	January 1 to December 31
Administration	CIGNA Retirement & Investment Services Retirement Service Center, H18B P.O. Box 2975 Hartford, CT 06104 1.800.224.4624
Plan Sponsor	CIGNA Corporation
Named Fiduciary	Corporate Benefit Plan Committee c/o Office of the Corporate Secretary CIGNA Corporation 1650 Market Street, OL55F Philadelphia, PA 19192
Plan Administrator	Stewart M. Beltz CIGNA Corporation 1601 Chestnut Street, TL17B Philadelphia, PA 19192
Plan Trustee	CG Trust Company Suite 1900 525 West Monroe Street Chicago, IL 60661-3629
Agent for Legal Process	Office of Corporate Secretary CIGNA Corporation 1650 Market Street, OL55F Philadelphia, PA 19192 *Process may also be served on the Plan Administrator or Plan Trustee*
Plan Sponsor Identification Number	06-1059331
Plan Number	001

Glossary

Bold, teal words found throughout the text of this plan summary are defined here, in the glossary.

Benefit commencement date — The date you receive a lump sum distribution or the date you begin to receive Plan benefits under any other payment method.

Break in service — A calendar year in which you earn fewer than 500 hours of service. Certain periods of parental leave are counted to determine whether you have a break in service. Parental leave is absence from work because of pregnancy, child birth or adoption, or child care immediately after birth or adoption.

Change of control — A change in ownership of CIGNA Corporation or in the composition of CIGNA Corporation's Board of Directors, which occurs in any of the following ways:

- A person, entity or group acquires beneficial ownership of enough common or preferred shares of CIGNA Corporation stock to possess either:
  - more than 50 percent of the voting power of the shares that voted to elect Directors at the immediately preceding CIGNA Corporation shareholders meeting; or
  - more than 25 percent of the voting power of all outstanding CIGNA Corporation Common shares.
- After a merger or consolidation involving CIGNA Corporation, either:
  - CIGNA Corporation is not the surviving company; or
  - CIGNA Corporation Directors immediately before the merger or consolidation are less than a majority of the Board of Directors after the merger or consolidation.
- During any consecutive 24-month period, the Board of Directors of CIGNA Corporation changes so that those Directors on the Board at the beginning of the period, together with those Directors elected, nominated or recommended by at least a majority of Directors on the Board at the beginning of the period, cease being a majority of the Board.

CIGNA — CIGNA Corporation and its U.S. subsidiaries that participate in the Plan.

CIGNA company — CIGNA Corporation and any subsidiary in which it owns at least an 80% interest.

Credited service — An hour of service with CIGNA. It is the service used to determine whether you qualify for an annual benefit credit and the percentage level of your benefit credit.

Eligible earnings — Your annual CIGNA compensation that is counted in calculating your benefit credits for a given year. "Eligible earnings" includes most basic kinds of cash compensation paid to you before termination of employment, but excludes many kinds of special payments or long-term incentive awards.

"Eligible earnings" includes:

- base salary or wages
- overtime pay
- shift premium or differential pay
- most types of annual incentive pay and bonuses
- commission payments

In calculating eligible earnings, any reductions in your pay for pre-tax contributions to CIGNA 401(k) plans or flexible benefit plans are ignored. That is, your eligible earnings counts your pay before those reductions.

"Eligible earnings" excludes:

- allowances to expatriates or office managers
- relocation allowances or cost-of-living adjustments
- employee awards
- educational achievement awards or bonuses
- payments for cashed-out earned time off or holidays
- payout under long-term incentive plans or arrangements, whether in cash or stock

- expense reimbursements
- cash payout of previously deferred bonuses, commissions, or salary or long-term incentive payments, whether in cash or stock
- employee referral awards
- cash expense reimbursements or special credits
- severance pay or continuity bonuses

Hour of service — Any hour that you work or that you are paid for, even if you do not work, like a vacation day or a paid leave of absence. For most employees, hours of service are actual hours based on the company's records. Exempt employees (administrative, executive or professional employees as defined under federal minimum wage law) receive credit for 190 hours of service for any month in which they actually perform at least one hour of service. An hour of service also includes any normal work hours when you are on a company-approved unpaid leave of absence.

Normal payment method — The way Plan benefits will be paid to you unless you (with your spouse's consent) choose an optional payment method.

Old plan — The CIGNA Pension Plan as it existed before January 1, 1998.

Points — The sum of your age and years of credited service as of the beginning of a calendar year. Only completed, whole years are counted; there is no rounding up to the next highest year. Points are used to calculate your benefit credits for the calendar year.

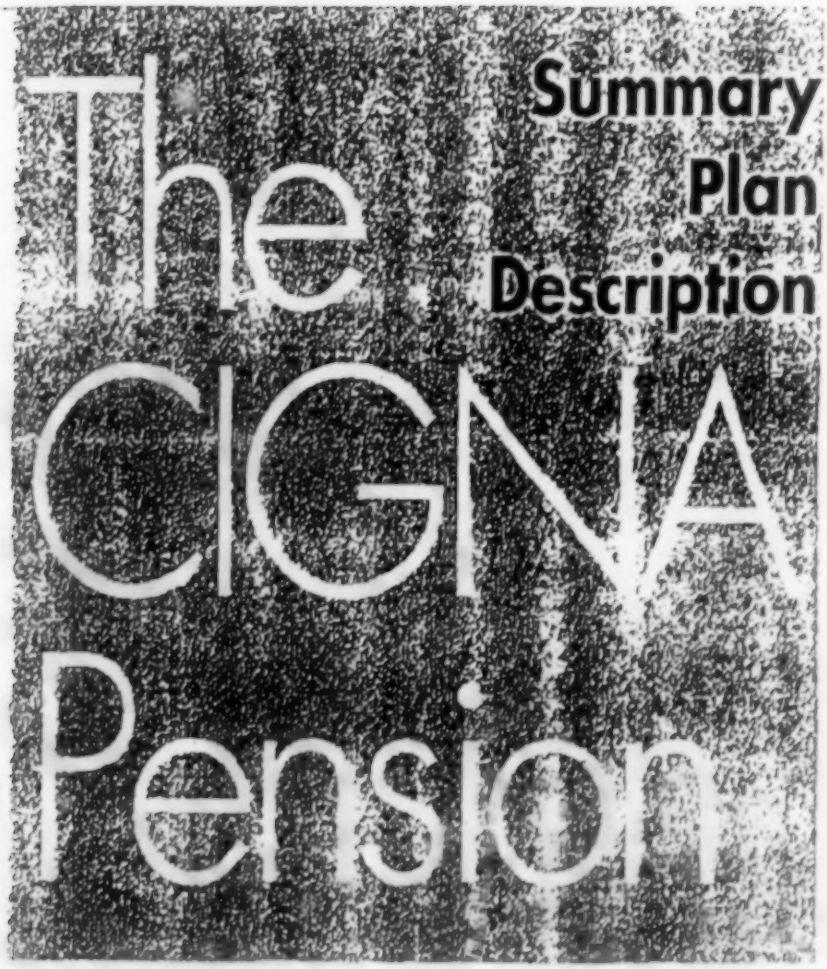
Termination for cause — A termination of employment on account of conviction for a felony involving fraud or dishonesty directed against a CIGNA company.

Vesting service — An hour of service with any CIGNA company, even if the company does not participate in the CIGNA Pension Plan. It is the service used to determine when your Plan benefit is vested, or non-forfeiture.

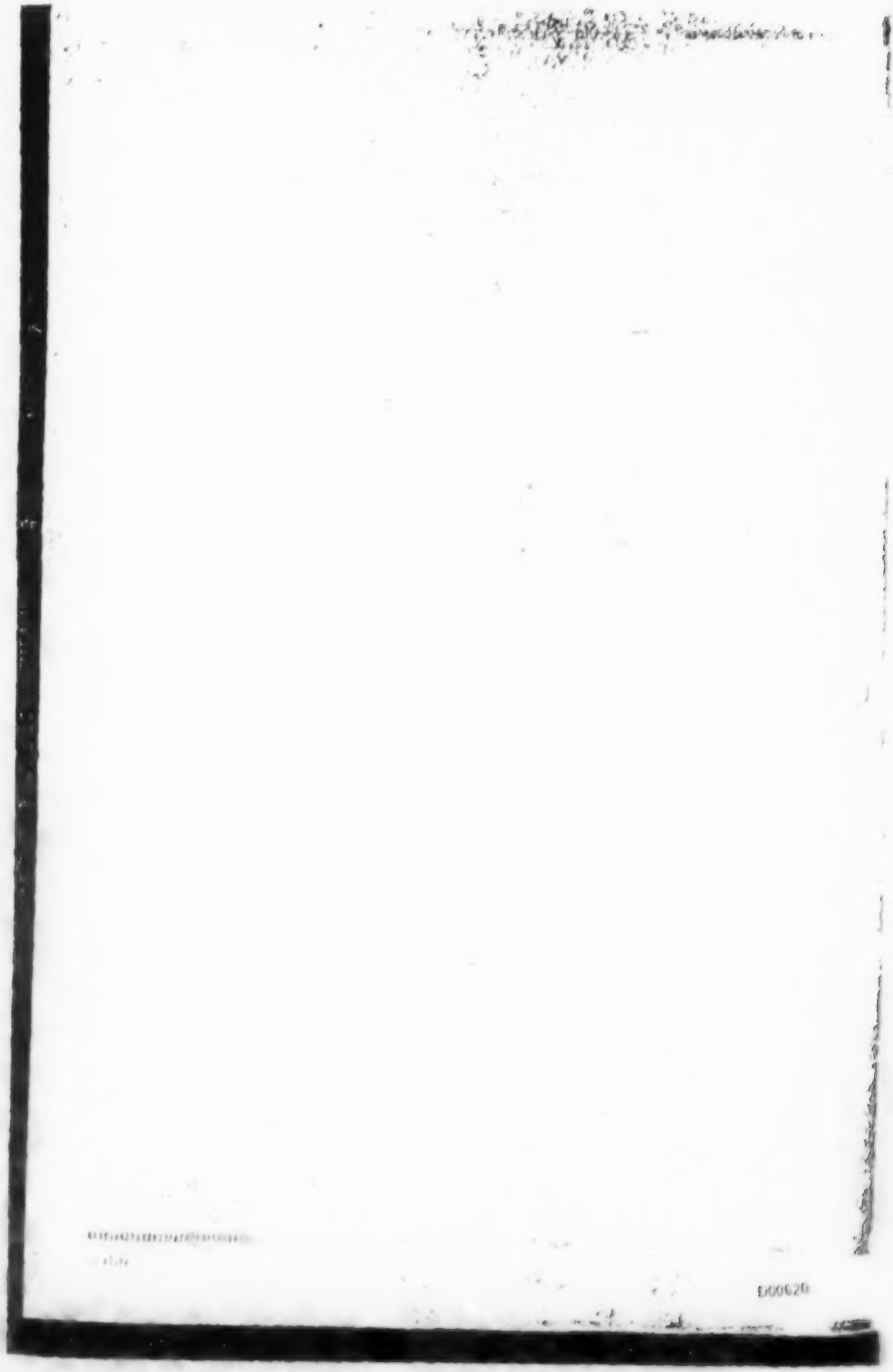
Year of service — A calendar year in which you are credited with at least 1,000 hours of service.

This summary plan includes certain key features of the CIGNA Pension Plan. It does not, however, cover every detail included in the plan document, trust agreement or other contracts that govern the plan. Every attempt has been made to ensure the accuracy of the information within. If there is any discrepancy between the contents of this material and the official plan documents and contracts, the plan documents and contracts will govern.

CIGNA plans to continue this plan indefinitely but reserves the right to amend or terminate any plan at any time for any reason. This summary plan does not create a contract of employment between CIGNA and any employee.



Signature benefits



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CIGNA Pension Plan

Signature BENEFITS

CIGNA Pension Plan

As used in this material, **CIGNA** refers to CIGNA Corporation and its subsidiaries that participate in the Plan

Certain **CIGNA** employees have a pension plan benefit different from the plan described in this summary. They are people who:

- participated in the CIGNA Pension Plan before 1989, unless:
  - the plan they participated in was not merged into the CIGNA Pension Plan until after 1988 (for example, CIGNA Healthplans and Equicor);
  - they left **CIGNA** before 1998 and were not rehired after 1997; or
  - their combined age and years of credited service was less than 45 years on December 31, 1997; or
- were hired by **CIGNA** after 1988, but left before 1998

Those who have different pension benefits receive a different plan summary.

Introduction I-1
- Eligibility I-1
- Understanding Service I-1
- Those Hours Add Up I-1
- Break in Service I-1

How Your Account Grows I-2
- Benefit Credits I-2
- Interest Credits I-2

Keeping Track of Your Account I-2

When Benefits Are Paid I-3

How Benefits Are Paid I-3
- Normal Payment Methods I-3
- Optional Payment Methods I-3
- About Taxes I-4

Life Events I-4
- If You Take an Unpaid Leave of Absence I-4
- If You Take a Paid Leave of Absence I-4
- If You Are on Short Term Disability I-4
- If You Are on Long Term Disability I-4
- If You Transfer to or From Another CIGNA Company I-4
- If You Leave CIGNA I-5
- If You Are Reemployed by CIGNA I-5
- If You Die Before Your Benefit Commencement Date I-5
- If You Die After Your Benefit Commencement Date I-5

Administrative Details I-6
- What Do I Do If I-6
- I Have a General Question About My Pension Plan? I-6
- I Need to Change My Personal Information? I-6
- I Need to Elect or Change My Beneficiary? I-6
- I Want an Estimate of My Pension Plan Benefits? I-6
- I Want an Estimate of My Social Security Benefits? I-6
- I Want to Retire Soon and Need Some Counseling? I-6
- I Want to Begin My Pension Benefits? I-6
- I Want to Begin My Social Security Benefits? I-6
- What Should My Family Do If I Die? I-6
- I Have Questions About or Need Copies of the Summary Annual Report (SAR), Form 5500, or Plan Document? I-6
- I Have General Questions About My Other Benefits at Retirement? I-6

Other Important Information I-7

Glossary I-11

Introduction

CIGNA provides a competitive pension that grows with you over your CIGNA career. Combined with the CIGNA 401(k) Plan, Social Security benefits and your personal savings, the CIGNA Pension Plan can help secure your financial future.

The CIGNA Pension Plan is an "account balance" plan. With this type of plan, a specific amount is credited to a pension account for you periodically—similar to a savings plan. The best part is that CIGNA does the saving for you. You make no contributions of your own to the Plan. As your age, company service and pay increase, the dollar amounts credited to your account increase as well.

You'll receive a quarterly statement of your Pension Plan account balance. What's shown will be the amount of accumulated credits in your account. You'll see that amount continue to grow every year you are with CIGNA. Once you have five years of service, you'll be eligible to receive pension benefits when you leave — that is, you'll be vested in your plan account.

Your Pension Plan Features...

- A secure benefit, funded solely by CIGNA, with no investment risk
- An account in your name that grows each year with benefit and interest credits
- Automatic participation on your first day of employment
- The ability to earn retirement benefits throughout your career
- The ability to take your vested account balance with you if you leave before retirement

Please read this summary carefully. It's a good idea to share it with members of your family, too. Words in teal, bold type are defined in the glossary beginning on page J-11. If you have any questions, please call the CIGNA Retirement Service Center at 1.800.224.4624.

Eligibility

You are automatically a Pension Plan participant if you work for CIGNA — even if on a part-time or temporary basis. You don't need to enroll. You begin to participate automatically on the first day you are eligible.

Understanding Service

Your service is a key factor in determining your benefits. Service is counted in years and hours. You earn a **year of service** for each calendar year in which you have at least 1,000 **hours of service**. CIGNA counts your years of service in two ways:

- **Vesting Service** is used to determine your vesting status. After five years of vesting service, you earn a guaranteed right to your pension benefit.
- **Credited Service** is used to determine whether you are eligible to receive benefit credits for a particular calendar year, and if so, how many. Once you receive credit for a year of service, you generally don't lose it.

Vesting

Being vested means you are entitled to receive a benefit from the Plan — even if you leave CIGNA before retirement. You cannot forfeit a vested benefit. You are vested once you have five years of **vesting service**, with at least 1,000 **hours of service** each year. If you leave CIGNA before you have five years of **vesting service**, you forfeit your benefits.

If you were in the CIGNA Pension Plan before 1998, you've received credit for your prior years of **vesting service** and **credited service**.

Did you know that service with a non-participating **CIGNA company** counts toward **vesting service**? (See If You Transfer to or from Another CIGNA Company on page J-4.)

Those Hours Add Up

An **hour of service** is generally any hour for which you receive pay, whether or not you are actually working (for example, a vacation day counts toward your service). If your hours add up to at least 1,000 in a calendar year, you earn a **year of service** for that year.

Break in Service

If you work fewer than 500 hours in a year, that year will be considered a **break in service**.

- *If you're not vested* and you have a break in service for five consecutive years, you'll lose your account balance. You'll have to start earning **vesting service** all over again. If your break is less than five consecutive years, your prior vesting service and your account balance will be restored (though you will not receive interest credits for the period of your break in service).
- *Once you're vested*, you will not lose your account balance or prior service, no matter how long your break in service. You also receive interest credits (see page J-2) for the period of the break in service.

Generally, for calculating your **points**, you will not lose your accumulated **credited service** no matter how long your break in service, with one exception: if you participated in the CIGNA Pension Plan before 1998, but left CIGNA before becoming vested, you will lose your prior credited service if you lose credited service under the pre-1998 rules of the Plan.

How Your Account Grows

An account is set up in your name to record the accumulation of ongoing benefit credits and interest credits. Each dollar's worth of credit is a dollar of retirement benefits payable to you after you are vested. Under the plan, your benefit will grow steadily throughout your career as credits are added to your account.

If you were an employee on December 31, 1997, or rehired after 1997, any benefit you earned under the Pension Plan through December 31, 1997 was converted to an opening account balance in this Pension Plan. The opening balance was equal to the lump sum value of the pension benefit you earned through December 31, 1997.

Your account balance grows in two ways — annual benefit credits and quarterly interest credits.

Benefits Credits

For each year in which you earn a year of **credited service**, CIGNA will add benefit credits to your account equal to a percentage of your annual **eligible earnings**. The percentage will depend on your points, which are the sum of your age and credited service on January 1 of each year. Benefit credits are made according to the chart below.

The Pension Plan is designed to work together with Social Security. As the chart shows, the plan provides a greater benefit credit for the portion of your **eligible earnings** above the Social Security "integration level."

YOUR BENEFIT CREDITS

Your Points (your age plus credited service at the beginning of the year)	Credit (as a percentage of your eligible earnings) For earnings below the integration level	For earnings above the integration level*
Under 35	3%	4.5%
35 to 44	4%	5.5%
45 to 54	5%	6.5%
55 to 64	6%	7.5%
65 or more	7%	8.5%

*The integration level is $34,000 in 1998 and 50% of the Social Security taxable wage base thereafter.

The greater benefit credit for earnings above the integration level reflects the fact that there are no Social Security retirement benefits earned for income above the taxable wage base. Neither you nor CIGNA pays Social Security retirement taxes on your income above the Social Security taxable wage base, so CIGNA shares some of these tax savings with you through this increased credit.

Interest Credits

Your account will also grow through interest credits.

The annual interest rate will equal the yield on 5-year Treasury Bonds as of November of the previous calendar year, plus 0.25 percentage points. The annual interest rate will not be less than 4.5% or greater than 9%. These interest rates are consistent with guidelines established by the IRS for account balance plans.

CIGNA will add interest credits to your account each quarter until the month before your benefit commencement date.

EXAMPLES OF ANNUAL BENEFIT CREDITS

Eligible Earnings	Annual Benefit Credits: Less than 35 points*	35 to 44 points*	45 to 54 points*	55 to 64 points*	65+ points*
$30,000	$900	$1,200	$1,500	$1,800	$2,100
$50,000	$1,740	$2,240	$2,740	$3,240	$3,740
$70,000	$2,640	$3,340	$4,040	$4,740	$5,440
$100,000	$3,990	$4,990	$5,990	$6,990	$7,990
$150,000	$6,240	$7,740	$9,240	$10,740	$12,240

*Assumes a plan integration level of $34,000.

Keeping Track of your Account

To help you keep track of your account growth, CIGNA will send you account statements four times a year. Each statement will show benefit credits and interest credits added to your account and the value of your account at the end of each period.

Benefit and interest credits will be added to your account statement quarterly. Interest credits will be calculated on your account balance before benefit credits are added. The quarterly reporting of benefit credits (and related interest credits) is merely a projection for the current year until you actually earn another year of **credited service**.

You continue to earn quarterly interest credits until the month before your **benefit commencement date**, regardless of whether you are eligible for further benefit credits.

When Benefits Are Paid

You can receive your full vested Pension Plan benefit when you leave CIGNA for any reason.

Because the Plan is a retirement plan, the IRS imposes a 10% excise tax on certain early distributions. (That's in addition to normal federal income tax — see About Taxes on page J-4.) However, this 10% tax will *not* apply if:

- The distribution is made after you reach age 59½;
- The distribution is made after you terminate employment in the year you reach age 55 or later;
- The distribution is made due to your death or disability;
- You roll over your distribution to an IRA or another qualified plan;
- The distribution is paid to you as equal (or almost equal) payments over your and/or your beneficiary's life (or life expectancies);
- The distribution is made to your spouse, child or other dependent, as required under the terms of a qualified domestic relations order; or
- The distribution is to pay for unreimbursed medical expenses, as defined by the IRS.

If you leave CIGNA before age 65, you may keep your account balance (if more than $5,000) in the Plan and continue to receive interest credits until you request a distribution or reach age 65.

(Also see If You Die Before Receiving Benefits on page J-5.)

How Benefits Are Paid

If you are vested when you leave CIGNA, you'll receive your benefit in the **normal payment method**, unless you choose an optional method of payment. The plan allows you to pick the payment method best suited to your situation.

If your account balance is $5,000 or less, your benefit will automatically be paid in a lump sum as soon as possible after your termination date. Once your benefit payments begin, you cannot change your benefit payment method.

Normal Payment Methods

If you're single — Starting at age 65, monthly payments will be paid only to you for your lifetime. When you die, payments end. This is called a **Single Life Annuity**.

If you're married — Starting at age 65, reduced monthly payments will be made to you for your lifetime. If your spouse outlives you, he or she will receive monthly payments, equal to 50% of the amount you had been receiving, for the rest of his or her lifetime. This is called a 50% **Joint and Survivor Annuity**.

Your Eligible Spouse

If you're legally married when your pension starts, your spouse is eligible for survivor benefits — unless waived — if you die first. (See Spouses' Rights on page J-7.)

Optional Payment Methods

If you don't want to receive your benefit by the **normal payment method**, you may choose one of the following payment methods:

Lump Sum — You receive a single lump sum cash payment equal to your account balance.

Single Life Annuity — Monthly payments will be paid to you for your lifetime only. When you die, payments end.

Single Life Annuity with cash refund — This option is similar to the single life annuity except that, if you die before you have received the amount of your account balance in monthly annuity payments, the difference between your account balance and the amount you have received in annuity payments will be payable to your beneficiary in a lump sum. For example, if your account balance was $100,000 when you retired and you had received $75,000 worth of monthly annuity payments at your death, your beneficiary would receive a lump sum of $25,000. To purchase this added protection, your monthly payments under this option will be less than the monthly payments under a single life annuity with no cash refund.

50% Contingent Pensioner Annuity — This option is similar to the **normal payment method** for married participants, except that you may name anyone you wish as your beneficiary.

100% Contingent Pensioner Annuity — This option is similar to the 50% contingent pensioner annuity, except that the monthly payments you will receive will be smaller and the payments your beneficiary receives after your death will equal 100% of your payments, rather than 50%.

If you're married and elect an option other than the 50% or 100% contingent pensioner annuity with your spouse as beneficiary, federal law requires that you must have the written, notarized consent of your spouse. (See Spouses' Rights on page J-7.)

CIGNA Pension Plan

The following chart shows benefit amounts under the normal and optional payment methods for a CIGNA employee retiring at age 62, with an account balance of $200,000.

About Taxes

Plan payments are subject to federal taxes when you receive them. Income and inheritance taxes on Plan payments vary by state and county.

If you elect this method of payment...	You can receive a monthly benefit of...	After your death, your beneficiary receives a monthly benefit of...
Normal		
• Single	$1,561 for life	$0
• Married	$1,458 for life	$729 for life*
Optional		
• Lump Sum	One-time payment of $200,000	$0
• Single Life Annuity w/Cash Refund	$1,486 for life	Any remaining account balance in a lump sum
• 50% Contingent Pensioner Annuity	$1,458 for life	$729 for life*
• 100% Contingent Pensioner Annuity	$1,368 for life	$1,368 for life*

6.83% interest rate is used in this example
** Assumes that beneficiary is age 62*

Life Events

The CIGNA Pension Plan is designed to support you during the different stages and events of your life. Here's how your benefit is affected by such life events as your disability, approved leave of absence, termination, transfer, reemployment or death.

If You Take an Unpaid Leave of Absence

If you take an approved unpaid leave of absence, your normal scheduled work hours will continue to count toward **credited service** and **vesting service** (see Understanding Service on page J-1). **CIGNA** will continue to add benefit credits to your account for up to six months following the month your leave began (but not after you terminate employment with **CIGNA**). Benefit credits will be based on your base salary at the time your leave begins, plus any other **eligible earnings** actually paid to you during this six-month period.

Upon your return from a qualifying *military leave of absence*, benefit credits will be added to your account for the time you were gone, to the extent required by federal law.

Your account continues to earn quarterly interest credits until the month before your **benefit commencement date**, regardless of whether you are eligible for additional benefit credits.

If You Take a Paid Leave of Absence

If you take an approved paid leave of absence, your normal scheduled work hours will continue to count toward a year of **credited service** and **vesting service** (see Understanding Service on page J-1). **CIGNA** will continue to add benefit credits to your account during your absence, for up to six months. Benefit credits will be based on your **eligible earnings** during this six-month period. Your account continues to earn quarterly interest credits until the month before your **benefit commencement date**, regardless of whether you are eligible for additional benefit credits.

If You Are on Short-Term Disability

If you are disabled and eligible for CIGNA Short-Term Disability Plan benefits, **CIGNA** will continue to add benefit credits to your account based on your salary at the time your disability began, plus any other **eligible earnings** actually paid to you during the period you receive short-term disability benefits. Your account continues to earn quarterly interest credits until the month before your **benefit commencement date**, regardless of whether you are eligible for additional benefit credits. Your normal scheduled work hours will continue to count toward **credited service** and **vesting service** (see Understanding Service on page J-1).

If You Are on Long-Term Disability

If you are disabled and eligible for CIGNA Long- Term Disability Plan benefits, your benefits credits will stop until you return to work but interest credits will continue. Your normal scheduled work hours will continue to count toward **credited service** and **vesting service**.

If You Transfer to or from Another CIGNA Company

If you transfer between two companies that participate in this Plan, you'll continue to earn **credited service** and **vesting service** and your benefit credits and interest credits will continue without interruption.

If you transfer from a **CIGNA company** that does not participate in this Plan to one that does, you may be vested. **Vesting service** counts for non-participating CIGNA companies, too, so if you have five years of service with any CIGNA company, you've earned a vested right to a pension benefit. You can now begin earning **credited service** and benefit credits and interest credits under the Plan. (See Understanding Service on page J-1.)

If you transfer from a **CIGNA company** that *does* participate in this Plan to a CIGNA company that *does not*, you'll continue to earn **vesting service**, and interest credits will be added to your account. However, you will not continue to earn **credited service** and no benefit credits will be added to your account.

If You Leave CIGNA

If you leave **CIGNA** and are vested, you are entitled your plan benefits right away.* You may:

- receive an after-tax, lump sum payment or roll over the full amount into an individual retirement account (IRA) or your new employer's qualified retirement plan;
- take your distribution in another payment method (the IRS imposes additional taxes on certain early distributions — see When Benefits Are Paid on page J-3); or
- keep your account balance (if more than $5,000) in the Plan, where it will continue to earn interest credits until your benefit start date or you reach age 65.

If You Are Reemployed by CIGNA

If you leave **CIGNA** and later return, you'll participate in the Plan if the company that rehires you participates. See Break in Service on page J-1 for an explanation of how an interruption in your **CIGNA** employment may affect your **vesting service** and plan benefits.

If you were not vested when you left, and your **vesting service** and account balance are restored when you return, **CIGNA** will again add your previous benefit credits and interest credits to the same account. If your vesting service and account balance are not restored when you return, you'll start a new account.

If you were vested when you left, quarterly interest credits were added to your account during your break in service. When you return to CIGNA, both benefit credits and interest credits will again be added to your account. But if you've received any benefits from the Plan, you'll have a new account when you return.

If you were in the old plan when you left, the pension benefits you earned will be converted to an opening account balance in this plan when you return. The conversion formula used is based on guidelines established by the federal government for valuing pension benefits. If you have questions about the conversion formula, you may call the CIGNA Retirement Service Center at 1.800.224.4624.

Your benefits will not be converted to the new Plan, but maintained in the *old plan*, if...

- you are age 65 or older when you return; or
- you are already receiving a pension under the *old plan* (see below);

If you are receiving pension benefits when you return and you are...

- **younger than 65**
  Your monthly pension payments will stop for any calendar month in which you work 80 hours or more. (Pension payments will resume following a month when you work less than 80 hours a month) You will earn a completely separate benefit for your future service.
- **65 or older**
  Your pension payments will continue and you'll earn a completely separate benefit (based on your prior credited service) for your future service.

If You Die Before Your Benefit Commencement Date

If you're married, your spouse will automatically be your Plan beneficiary, unless he or she has consented in writing, before your death, to your naming someone else.

If you die after becoming vested but before your **benefit commencement date**, your account balance will be paid to your beneficiary. If your account balance is more than $5,000, your beneficiary may choose a lump sum or a single life annuity. If your account balance is $5,000 or less, your beneficiary will be paid in a lump sum.

If the beneficiary is your surviving spouse, he or she may keep your account balance in the plan until *you* would have reached age 65. A beneficiary other than your spouse must begin to receive a single life annuity by the end of the first calendar year after the year of your death or receive a lump sum payment by the end of five calendar years after the year of your death.

Interest credits will be made to the account until the month before your beneficiary's **benefit commencement date**.

If you have no surviving spouse and you have not named a Plan beneficiary, your benefit will be paid in a lump sum to the first available of:

- Your surviving natural and adopted children (in equal shares)
- Your surviving parents(s) (in equal shares)
- Your estate

(See What Should My Family Do if I Die? on page J-6.)

Use JetForms to print out a Beneficiary Designation Form.

Here's How:

- Click on the *JetForm Filler™* icon, then click the
- *Use Form* button at the top left of the screen, then
- *IGENERAL USAGE FORMS*, then
- *IBenefit Forms*, then
- *Pension Plan Beneficiary Designation* ...and print!

If You Die After Your Benefit Commencement Date

If you die while receiving a plan benefit paid as a...	Your beneficiary will receive...
Lump Sum	no benefits payable after your death.
Single Life Annuity with a cash refund	a lump sum that might be due (see page J-3).
Single Life Annuity	no benefits payable after your death.
50% Contingent Pensioner Annuity	payments for the rest of his or her life, but only if he or she survives you.
100% Contingent Pensioner Annuity	payments for the rest of his or her life, but only if he or she survives you.

CIGNA Pension Plan

Administrative Details

Do you have questions about your retirement? Call the CIGNA Retirement Service Center at 1.800.224.4624, 8:00 a.m. to 8:00 p.m., Eastern time.

WHAT DO I DO IF...	YOU SHOULD...
I Have a General Question About My Pension Plan?	Call the Retirement Service Center. They will be able to answer most questions when you call. If your question requires special research, they will give you an answer as soon as possible.
I Need to Change My Personal Information, such as: • address • date of birth • name • status	Notify your manager. It's important for your manager to receive this information first. Once he/she informs payroll of your change, your retirement plan records will be automatically updated.
I Need to Elect or Change My Beneficiary?	Use the form (go to page 9 to see how), or call the Retirement Service Center.
I Want an Estimate of My Pension Plan Benefits?	Call the Retirement Service Center. They will send you a Benefit Summary detailing your benefits and your options. Check your benefit statement carefully and call them if you have any questions.
I Want an Estimate of My Social Security Benefits?	Call Social Security at 1.800.772.1213 to request your Earnings and Benefits Estimate Statement. This will tell you the earnings Social Security uses to calculate your Social Security benefit. Check your earnings carefully and notify Social Security if they're not correct. You can visit their website at http://www.ssa.gov
I Want to Retire Soon and Need Some Counseling?	Contact Signature Benefits Services. Pre-retirement counseling can help you understand which benefits stop and which continue, your pension, retiree life insurance, retiree health care, Medicare and Social Security. • Phone: Network 761.2539, 5.2539 or 1.800.551.2539. • Fax: 215.761.5429 • E-mail: Signature Benefits Services Benefits counselors are available to answer your questions, Monday through Friday, 8:30 a.m. to 5:00 p.m., Eastern time.
I Want to Begin My Pension Benefits?	Notify your manager and call the Retirement Service Center. When the Retirement Service Center receives formal notification of your termination date, they will send you a Distribution Initiation Package which will include a final calculation of your payment options and the necessary forms to start your benefit payments. This process may take from 30-90 days, so it is important to notify the Retirement Service Center of your plans as soon as you can.
I Want to Begin My Social Security Benefits?	Call Social Security at 1.800.772.1213 to request a Social Security retirement application six weeks to 3 months before you plan to retire. (Retrieve the application at least 2 months before you plan to retire).
What Should My Family Do If I Die?	A family member or beneficiary should call Signature Benefits Services at 1.800.551.2539. Your spouse or beneficiary will be sent a Distribution Initiation Package which will include a final calculation of the death benefit and the necessary forms to initiate the payments. If there are no lump-sum payouts, your family will be notified in writing.
I Have Questions About or Need Copies of the Summary Annual Report (SAR), Form 5500, or Plan Document?	Call the Retirement Service Center. They will answer any questions that you have and will provide copies of the documents upon request.
I Have General Questions About My Other Benefits at Retirement?	Contact Signature Benefits Services. • Phone: Network 761.2539, 5.2539 or 1.800.551.2539. • Fax: 215.761.5429 E-mail: Signature Benefits Services enefits Counselors are available to answer your questions, Monday through Friday, :00 a.m. to 5:00 p.m., Eastern time.

Other Important Information

Minimum Benefits

If you participated in the Pension Plan before 1998, your **old plan** benefits were converted to an opening account balance in this Plan. Your final Plan benefits cannot be less than your **old plan** benefits on December 31, 1997. If this minimum benefits rule applies to you, you'll be notified by the Retirement Service Center when you request a distribution.

Maximum Benefits

Federal tax laws impose certain limitations on the contributions and benefits under qualified retirement plans. For example, as of 1998, no more than $160,000 of your annual compensation may be taken into account when calculating benefit credits; and your annual Plan benefit (expressed in the form of an annuity starting at age 65) can't be over $130,000. CIGNA makes up for benefits lost due to these maximums through an unfunded, non-qualified plan called the CIGNA Supplemental Pension Plan.

Deferred Compensation

Compensation you defer under any CIGNA Deferred Compensation Plan cannot be considered **eligible earnings** under this Plan. However, it may be considered eligible earnings under the CIGNA Supplemental Pension Plan.

Change of Control Protection

Your Plan benefits are protected in a number of ways if there is a change of control of CIGNA Corporation.

For three years following a change of control, the Plan cannot be terminated. You must be allowed to earn benefit credits and interest credits if you remain employed and the rate at which you earn benefit credits (the **points** chart) cannot be reduced.

For five years following a change of control, no CIGNA company (or successor) can take any steps that would result in a reversion of any Plan assets to any CIGNA company (or successor) or a reduction in Plan assets (except by paying benefits and covering reasonable costs of the Plan). For example, the merger of the Plan into an underfunded pension plan of a successor to CIGNA Corporation would not be permitted.

If you are a CIGNA employee on the effective date of the change of control and your employment terminates (except for cause) during the following three-year period, you will receive a special benefit credit for your year of termination. The benefit credit will be a percentage of **eligible earnings** with an adjustment, calculated as follows:

1. Your eligible earnings will be your highest base salary in effect at any time between the date of the change of control and your termination date.
2. The percentage will be based on your **points** at date of termination. In calculating your points, you will be treated as having earned a year of **credited service** for the year of your termination (even if you leave before earning 1,000 **hours of service**).
3. The dollar amount resulting from the percentage of #2 multiplied by eligible earnings in #3 will be adjusted by being multiplied by the number of years (whole years and number of whole months in the twelfths) between January 1 of the year you terminate employment and the end of the three-year period beginning on the date of the change of control.
4. That result will be reduced by any benefit credit you actually earn for the year of your termination. The resulting special benefit credit will be added to your Plan account at the end of the month of your termination.

After a change of control occurs, these protections cannot be eliminated for five years. Before a change of control, CIGNA Corporation may change or even eliminate these protections.

IRS Approval

The Plan is subject to continuing approval of the IRS, and it may be necessary to change it from time to time to accommodate changes in the law or IRS regulations.

Spouses' Rights

Under federal law, your spouse may have rights to a Plan benefit. The law requires that if you are married:

- You must receive your Plan benefit as a 50% or 100% Contingent Pensioner Annuity and name your spouse as beneficiary, unless he or she agrees in writing to your election of another method of payment or another person as beneficiary.
- If you die before your **benefit commencement date** and after you are vested, your spouse must receive a death benefit unless you designated a different beneficiary and your spouse consents in writing before you die.

As a result, *you must have your spouse's consent* to:

- Elect a Lump Sum or Single Life Annuity; or
- Designate a beneficiary other than your spouse to receive a 50%, or 100% Contingent Pensioner Annuity; or
- Designate a beneficiary other than your spouse to receive any preretirement death benefits if you die before your benefit payments begin.

To waive these benefits, you and your spouse must complete a form provided by the Plan office and have your spouse's signature witnessed by a notary public.

BEST AVAILABLE COPY

Assignment of Benefits

Except as required by law, your Pension Plan benefits may not be pledged, assigned or garnished in payment of any debts.

Qualified Domestic Relations Order (QDRO)

The Plan Administrator will comply with a Qualified Domestic Relations Order (QDRO). A QDRO is any court judgment, order, decree or approval of a property settlement agreement made under state domestic relations law. The order may relate to child support, alimony or marital property rights for a spouse, child or other dependent and may direct payment of all or part of your Plan benefit to another person.

Paying for Your Pension

Your Plan benefits are paid directly by the CIGNA Pension Plan Trust. The Trust contains money contributed over the years by CIGNA and investment earnings on those contributions. Money in the Trust is used solely to pay Pension Plan benefits and to cover certain Plan expenses.

Your account contains credits in the form of hypothetical dollars. It does not contain actual dollars. As plan benefits are paid to you, money is distributed to you (or your beneficiary) from the Trust.

The Trustee is CG Trust Company of Chicago. CG Trust Company is CIGNA Corporation subsidiary.

The Pension Benefit Guaranty Corporation (PBGC)

Benefits under this plan are insured by the Pension Benefit Guaranty Corporation (PBGC). Generally, if the Plan terminates without enough money to pay all benefits, the PBGC guarantees you payment of most vested normal retirement benefits, early retirement benefits and certain survivor pensions. However, the PBGC does not guarantee all types of benefits and the amount of benefit protection has certain limitations.

The PBGC guarantees vested benefits at the level in effect on the date of Plan termination. However, or if benefits have been increased within five years before Plan termination, the whole amount of the benefit increase may not be guaranteed. In addition, there is a ceiling on the amount of monthly benefit that PBGC guarantees, which is adjusted periodically.

For more information on PBGC insurance protection and its limitations, ask the plan administrator or the PBGC. Inquiries to the PBGC should be addressed to the Office of Communications and Public Affairs, PBGC, 1200 K Street, N.W., Washington, DC 20005-4026, or call the PBGC at 202-326-4000.

Appeal Process

You (or your beneficiary) file a claim for Plan benefits by completing and returning the forms in your Distribution Initiation Package (see page J-6). If your claim for benefits is denied in whole or in part, you (or your beneficiary) will be notified in writing by the plan administrator with-in 30 days. This written notice will include:

- Specific reason(s) for the denial
- References to plan provision(s) on which the denial is based
- A description of any additional material or information needed to grant a claim
- Procedures for appealing the decision

You or your authorized representative may review all documents related to any denial of benefits. If you disagree with the plan administrator's decision, you have 60 days from the receipt of the original denial to request a review. This request should be in writing and sent to the plan administrator (see page J-10 for the address). The claim will be reviewed, and you will be notified of the decision within 60 days. If special circumstances require more time for this process, you will be notified in writing no later than 120 days after the receipt of your request.

Continuation of the Plan

CIGNA expects to maintain this Plan indefinitely. However, CIGNA reserves the right to amend, modify or terminate the Plan at any time and for any reason. In general, no amendment or modification will reduce any benefit accrued to the date of amendment or modification. Future accruals of benefits may be modified, suspended or ended as a result of such a change. Any amendment or termination of the Plan will be by action of the Board of Directors of CIGNA Corporation, a committee of the Board, or a duly authorized officer of CIGNA Corporation.

If the Plan is ever terminated, affected participants will be immediately 100 percent vested in all benefits accrued to the date of the termination.

If the Plan Trust has insufficient assets upon termination of the Plan, Pension Benefit Guaranty Corporation (PBGC) insurance provisions will become effective. If the Plan Trust has excess assets, any excess assets beyond what are needed to purchase annuities to satisfy all benefit liabilities to participants and beneficiaries will be returned to CIGNA.

Not a Contract of Employment

Participation in the Plan does not imply a contract of employment between you and CIGNA. CIGNA's right to take disciplinary action against or terminate any employee, if necessary, is not affected by any provision of the Plan.

Statement of ERISA Rights

As a participant in the plan described here, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants are entitled to:

- Examine, without charge, at the plan administrator's office and at other specified locations, such as work sites, all plan documents, including insurance contracts, trust agreements and copies of all documents filed with the U.S. Department of Labor, such as detailed annual reports.
- Obtain copies of the plan documents and trust agreements and other plan information upon written request to the plan administrator. The administrator may make a reasonable charge for the copies.
- Receive a summary of the plan's annual financial report. The plan administrator is required by law to furnish each participant with a copy of summary annual reports.
- Obtain a statement telling you whether you have a right to receive a pension at your normal retirement age under the Plan and if so, what your benefit would be at normal retirement age if you were to stop working now. If you do not have a right to a pension, the statement will tell you how many years you have to work to earn one. This statement must be requested in writing and is not required to be given more than once a year. The statement must be provided free of charge.

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of employee benefit plans. The people who operate your plans, called fiduciaries, have a duty to do so prudently and solely in the interest of you and other plan participants and beneficiaries.

No one, including CIGNA or any person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit or exercising your rights under ERISA.

If your claim for a benefit is denied in whole or in part, you must receive a written explanation of the reason for the denial. You have the right to have the plan administrator review and reconsider your claim.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the plan and do not receive them within 30 days, you may file suit in federal court. In such a case, the court may require the plan administrator to provide the materials and to pay you up to $110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the administrator.

If you have a claim for benefits that is denied or ignored, in whole or in part, you may file suit in federal or state court.

If it should happen that a plan fiduciary misuses the plan money or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor or file suit in federal court.

In the event of legal action, the court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees (for example, if the court finds your claim is frivolous).

If you have questions about the Plan, you should contact the plan administrator. If you have any questions about your rights under ERISA, you should contact your nearest area office of the Pension and Welfare Benefit Administration, U.S. Department of Labor, found in your local telephone directory, or the Division of Technical Assistance and Inquiries, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington D.C. 20210.

CIGNA Pension Plan

NAME OF PLAN	**CIGNA PENSION PLAN, PART B** (Amended and Restated Effective January 1, 1998)
Type of Plan	Defined Benefit Pension
Plan Year	January 1 to December 31
Administration	CIGNA Retirement & Investment Services Retirement Service Center, H18B P.O. Box 2975 Hanford, CT 06104 1.800.224.4624
Plan Sponsor	CIGNA Corporation
Named Fiduciary	Corporate Benefit Plan Committee c/o Office of the Corporate Secretary CIGNA Corporation 1650 Market Street, 0155F Philadelphia, PA 19192
Plan Administrator	Stewart M. Beltz CIGNA Corporation 1601 Chestnut Street, TL17B Philadelphia, PA 19192
Plan Trustee	CG Trust Company Suite 1900 525 West Monroe Street Chicago, IL 60661 -3679
Agent for Legal Process	Office of Corporate Secretary CIGNA Corporation 1650 Market Street, 0155F Philadelphia, PA 19192 *Process may also be served on the Plan Administrator or Plan Trustee*
Plan Sponsor Identification Number	06-1059331
Plan Number	001

Glossary

Bold words found throughout the text of this plan summary are defined here, in the glossary.

Benefit commencement date — The date you receive a lump sum distribution or the date you begin to receive Plan benefits under any other payment method.

Break in service — A calendar year in which you earn fewer than 500 hours of service. Certain periods of parental leave are counted to determine whether you have a break in service. Parental leave is absence from work because of pregnancy, child birth or adoption, or child care immediately after birth or adoption.

Change of control — A change in ownership of CIGNA Corporation or in the composition of CIGNA Corporation's Board of Directors, which occurs in any of the following ways:

- A person, entity or group acquires beneficial ownership of enough common or preferred shares of CIGNA Corporation stock to possess either:
  - more than 50 percent of the voting power of the shares that voted to elect Directors at the immediately preceding CIGNA Corporation shareholders meeting; or
  - more than 25 percent of the voting power of all outstanding CIGNA Corporation Common shares.
- After a merger or consolidation involving CIGNA Corporation, either:
  - CIGNA Corporation is not the surviving company; or
  - CIGNA Corporation Directors immediately before the merger or consolidation are less than a majority of the Board of Directors after the merger or consolidation.
- During any consecutive 24-month period, the Board of Directors of CIGNA Corporation changes so that those Directors on the Board at the beginning of the period, together with those Directors elected, nominated or recommended by at least a majority of Directors on the Board at the beginning of the period, cease being a majority of the Board.

CIGNA — CIGNA Corporation and its U.S. subsidiaries that participate in the Plan.

CIGNA company — CIGNA Corporation and any subsidiary in which it owns at least an 80% interest.

Credited service — An hour of service with CIGNA. It is the service used to determine whether you qualify for an annual benefit credit and the percentage level of your benefit credit.

Eligible earnings — Your annual CIGNA compensation that is counted in calculating your benefit credits for a given year. "Eligible earnings" includes most basic kinds of cash compensation paid to you before termination of employment, but excludes many kinds of special payments or long-term incentive awards.

"Eligible earnings" includes:

- base salary or wages
- overtime pay
- shift premium or differential pay
- most types of annual incentive pay and bonuses
- commission payments

In calculating eligible earnings, any reductions in your pay for pre-tax contributions to CIGNA 401(k) plans or flexible benefit plans are ignored. That is, your eligible earnings counts your pay before those reductions.

"Eligible earnings" excludes:

- allowances to expatriates or office managers
- relocation allowances or cost-of-living adjustments
- employee awards
- educational achievement awards or bonuses
- payments for cashed-out earned time off or holidays
- payout under long-term incentive plans or arrangements, whether in cash or stock
- expense reimbursements
- cash payout of previously deferred bonuses, commissions, or salary or long-term incentive payments, whether in cash or stock
- employee referral awards
- cash expense reimbursements or special credits
- severance pay or continuity bonuses

Hour of service — Any hour that you work or that you are paid for, even if you do not work, like a vacation day or a paid leave of absence. For most employees, hours of service are actual hours based on the company's records. Exempt employees (administrative, executive or professional employees as defined under federal minimum wage law) receive credit for 190 hours of service for any month in which they actually perform at least one hour of service. An hour of service also includes any normal work hours when you are on a company-approved unpaid leave of absence.

Normal payment method — The way Plan benefits will be paid to you unless you (with your spouse's consent) choose an optional payment method.

Old plan — The CIGNA Pension Plan as it existed before January 1, 1998.

CIGNA Pension Plan

Points — The sum of your age and years of credited service as of the beginning of a calendar year. Only completed, whole years are counted; there is no rounding up to the next highest year. Points are used to calculate your benefit credits for the calendar year.

Termination for cause — A termination of employment on account of conviction for a felony involving fraud or dishonesty directed against a CIGNA company.

Vesting service — An hour of service with any CIGNA company, even if the company does not participate in the CIGNA Pension Plan. It is the service used to determine when your Plan benefit is vested, or non-forfeiture.

Year of service — A calendar year in which you are credited with at least 1,000 hours of service.

This summary plan includes certain key features of the CIGNA Pension Plan. It does not, however, cover every detail included in the plan document, trust agreement or other contracts that govern the plan. Every attempt has been made to ensure the accuracy of the information within. If there is any discrepancy between the contents of this material and the official plan documents and contracts, the plan documents and contracts will govern.

CIGNA plans to continue this plan indefinitely but reserves the right to amend or terminate any plan at any time for any reason The summary plan does not create a contract of employment between CIGNA and any employee.

DEFENDANT'S EXHIBIT

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ALL STATE LEGAL

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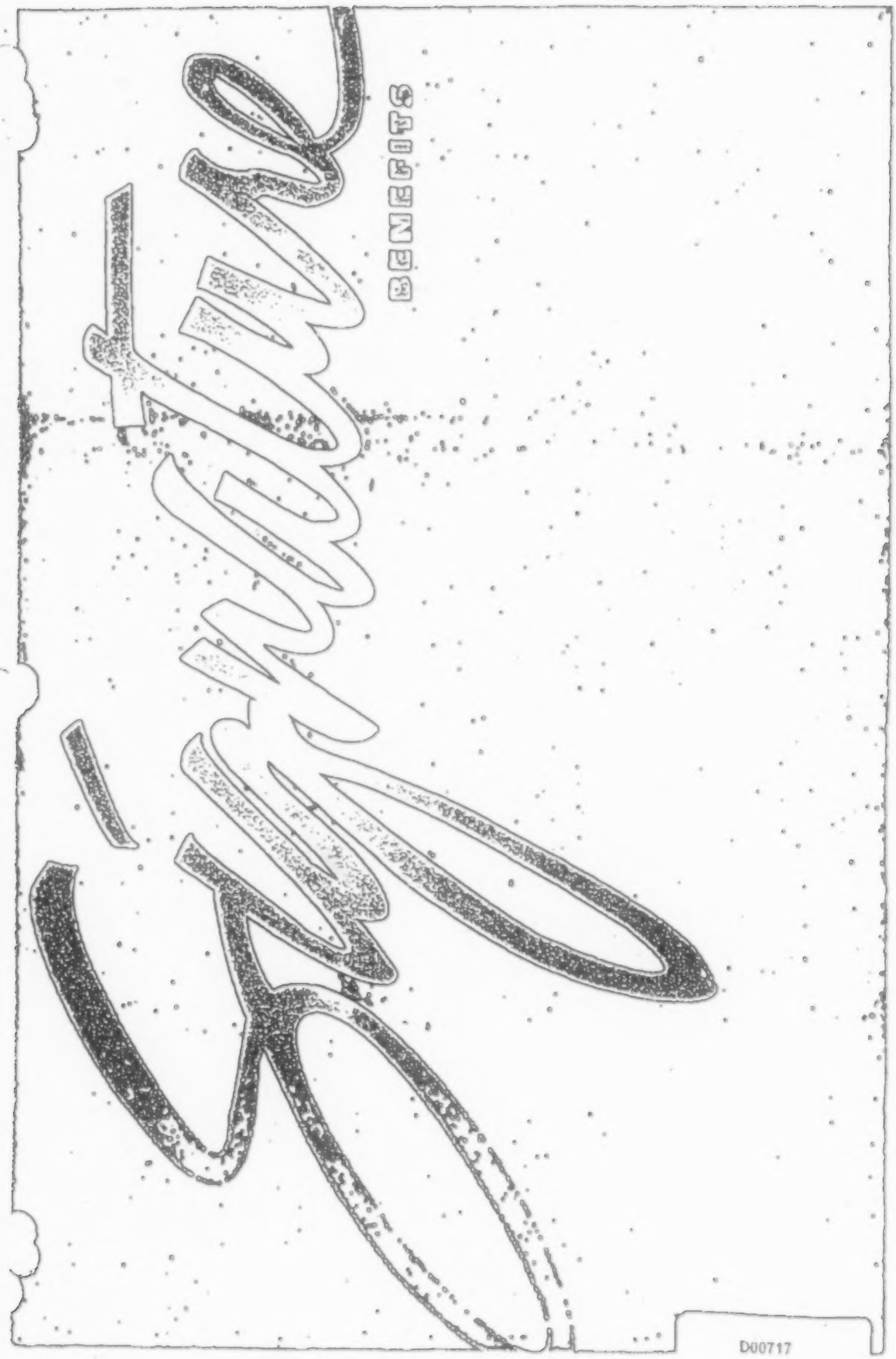
BENEFITS
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Transition to the New CIGNA Retirement Plan

Converting Your Pension Benefits to the New Plan

If you are a participant in the Pension Plan on December 31, 1997, you will automatically become a participant in the new CIGNA Retirement Plan on January 1, 1998. As of that date, the benefits you have earned under the Pension Plan will be converted to an opening account balance in the new plan. At the same time, you will begin earning retirement benefits under the new plan. Any benefits that you have earned under the Pension Plan through December 31, 1997, are fully protected, and their value will be reflected in your new plan balance.

We have prepared this flyer to help explain:

- How your final Pension Plan benefit will be calculated and transferred to the new plan, and also
- How your retirement benefit will continue to grow once you begin participating in the new plan.

Step 1:

Calculating Your Final Pension Benefit

The first step in converting your pension benefit to an opening account balance in the new plan is to determine the benefit you have earned under the Pension Plan as of December 31, 1997. This calculation will be made in the spring of 1998.

Your final pension benefit as of December 31, 1997, will be determined using the standard pension formula:

	1.67%
x	Your final average annual eligible earnings through 1997
x	Your years of credited service through 1997
–	Your Social Security offset
=	**Annual pension benefit payable at age 65**

D00718

The new Retirement Plan is designed to work together with SIP to provide you with a benefit that grows more uniformly over your career.

The following charts show how benefits could grow under the new retirement program for three different employees, taking into account both the SIP Plan (with half of the maximum possible new variable match) and the new Retirement Plan.

Assumptions for Charts

All graphs use the following assumptions for both the old and new programs:

Salary growth	4% per year
Employee's SIP contribution	6% of earnings each year
Capped SIP match	3% of earnings each year
SIP investment earnings	8% per year

The graphs use the following assumptions for the *new* program only:

Variable SIP match	1% of earnings each year
Retirement Plan interest credits	6.5% per year

For the 25- and 35-year-old employees, the Retirement Plan opening balance amounts were calculated using the standard conversion formula. For the 50-year-old employee, the special conversion formula for older, longer-service employees was used. Plan benefits will vary, depending on the actual values of the variables for which assumptions have been made.

For instance, if your final average annual eligible earnings through 1997 are $35,000, you have 5 years of credited service, and your Social Security offset is $800, your annual benefit earned through December 31, 1997, would be:

	1.67%
x	$35,000
x	5
	$800
=	$2,123

This is the annual amount that would be paid to you from the current Pension Plan, beginning at age 65 and continuing for your lifetime.

Step 2:

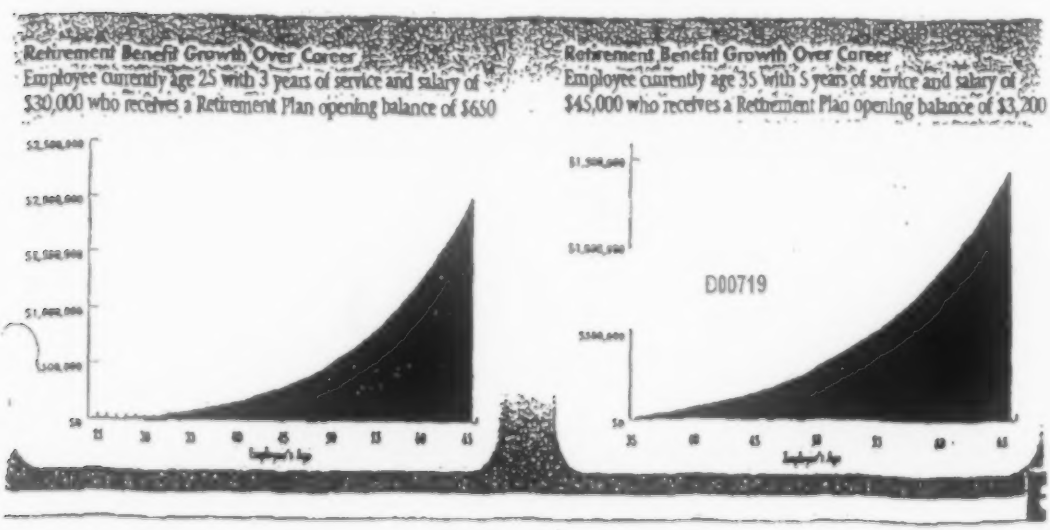
Converting Your Final Pension Benefit to an Opening Balance

Your normal pension benefit is an annual payment made to you for life, beginning when you turn age 65. To convert that annual pension benefit into an opening balance for the new plan, a calculation has to be made to determine how much that future stream of payments is worth today. This type of calculation is called a present value calculation.

The method used to calculate the present value of a pension benefit is established by law. Basically, the present value of your pension benefit equals the amount of money that someone would need to invest now to have enough money in the future to pay your annual pension benefit. This calculation is made assuming that the "invested" money would earn a moderate rate of interest (about 6.5% per year).* Because of the relatively low interest rate, the amount available to you today is relatively large. In fact, to increase your opening balance, CIGNA has selected a much lower interest rate than the 7% or 8% rate adopted by most companies making similar pension plan changes.

Your current age affects the present value of your pension benefit, because the closer you are to retirement age, the less time there is

*The exact interest rate we use will be determined in December based on the November 1997 rate established by law. We expect it to be about 6.5% based on current interest rates and have used 6.5% in all the examples in this flyer.



for the lump sum balance to grow, and therefore the more money you need to invest now. Because of this, two people who have earned the same pension benefit at age 65 will have different opening account balances if their ages are different. The older person will have the larger opening balance because there is less time for that person's account balance to grow.

Table 1. Sample factors used to convert final pension benefits to Retirement Plan opening account balances

Age 25	[illegible]
30	1.016
35	[illegible]
40	[illegible]
45	[illegible]
50	[illegible]

Note: If your age is between two of the ages shown, the present value factor used for your benefit would be between the factors shown for those two ages.

Table 1 shows the factors that will be used to convert final annual pension benefits to opening balances. If the employee in the example in the previous section were 40 years old, the opening balance would be calculated by multiplying his or her $2,123 annual pension benefit by the factor for a 40-year-old in the table. In this case, the opening balance would be:

$$\$2,123 \times 1.920 = \$4,076$$

After 25 years of investment at 6.5% annual interest, $4,076 would grow to about $19,700, which is enough money to pay the employee the $2,123 annual benefit beginning at age 65, assuming the employee has an average life expectancy and the unpaid portion of the benefit continues to grow at a rate of 6.5% per year.

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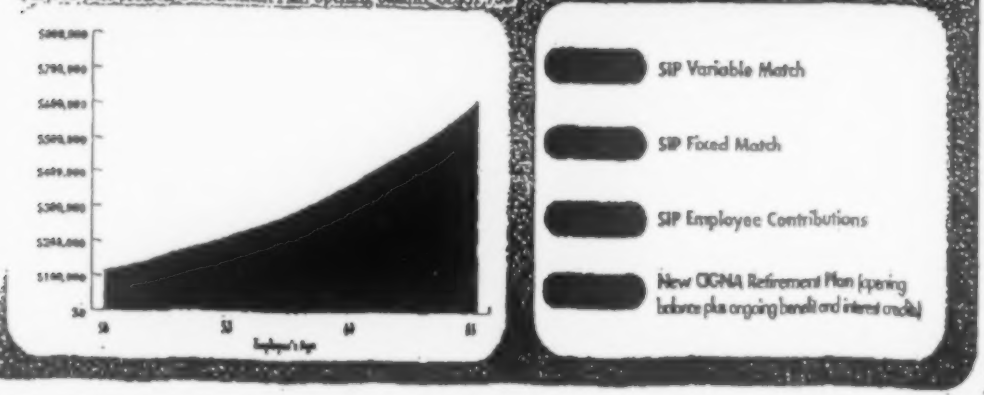
Retirement Benefit Growth Over Career

Employee currently age 50 with 15 years of service and salary of $45,000 who receives a Retirement Plan opening balance of $37,750



Special Conversion Formula for Older, Longer-service Employees

If your age and credited service with CIGNA total 55 or more on January 1, 1998, two special procedures will be used in calculating your opening account balance:

- First, your opening balance will be based on the present value of your age 62 early retirement benefit, rather than on the present value of your age 65 normal retirement benefit. The age 62 benefit has a higher present value than the age 65 benefit.
- Second, a lower interest rate will be used in making the present value calculation (one percentage point less than the standard rule—for instance, 5.5% if the standard rate is 6.5%). The lower interest rate increases the size of your opening balance.

These special procedures have been adopted because most employees in this age and service category will have fewer years to accumulate benefits under the new Retirement Plan. CIGNA wants to ensure that these older, longer-service employees receive fair and adequate benefits at retirement.

Your Actual Benefit

Keep in mind that this benefit comparison is intended to provide you with general information about opening balances and benefit growth under the Retirement Plan. Your actual benefit will depend on your age, future service and salary history, and may differ from the benefits shown in the examples. You will receive a *Total Compensation Report* in the spring of 1998 that will show your actual opening balance under the new plan. In the future, you will also receive quarterly statements of your Retirement Plan account balance, to help you track the growth of your retirement benefits.

Table 2. Sample Opening Balance Amounts

If your age, credited service and current pay on 12/31/97 are . . .	Your estimated opening account balance will be approximately . . .
Less than 1 year of credited service	$0 (you earned no pension benefit in 1997 if your service at the end of 1997 was less than 1 year)
Age 25 with 3 years of credited service and	
$30,000 final average pay	$ 650
$45,000 final average pay	$ 1,050
Age 35 with 5 years of credited service and	
$60,000 final average pay	$ 1,900
$75,000 final average pay	$ 3,200
$90,000 final average pay	$ 4,500
Age 50 with 15 years of credited service and	
$45,000 final average pay	$ 33,750
$60,000 final average pay	$ 51,550
$75,000 final average pay	$ 69,250

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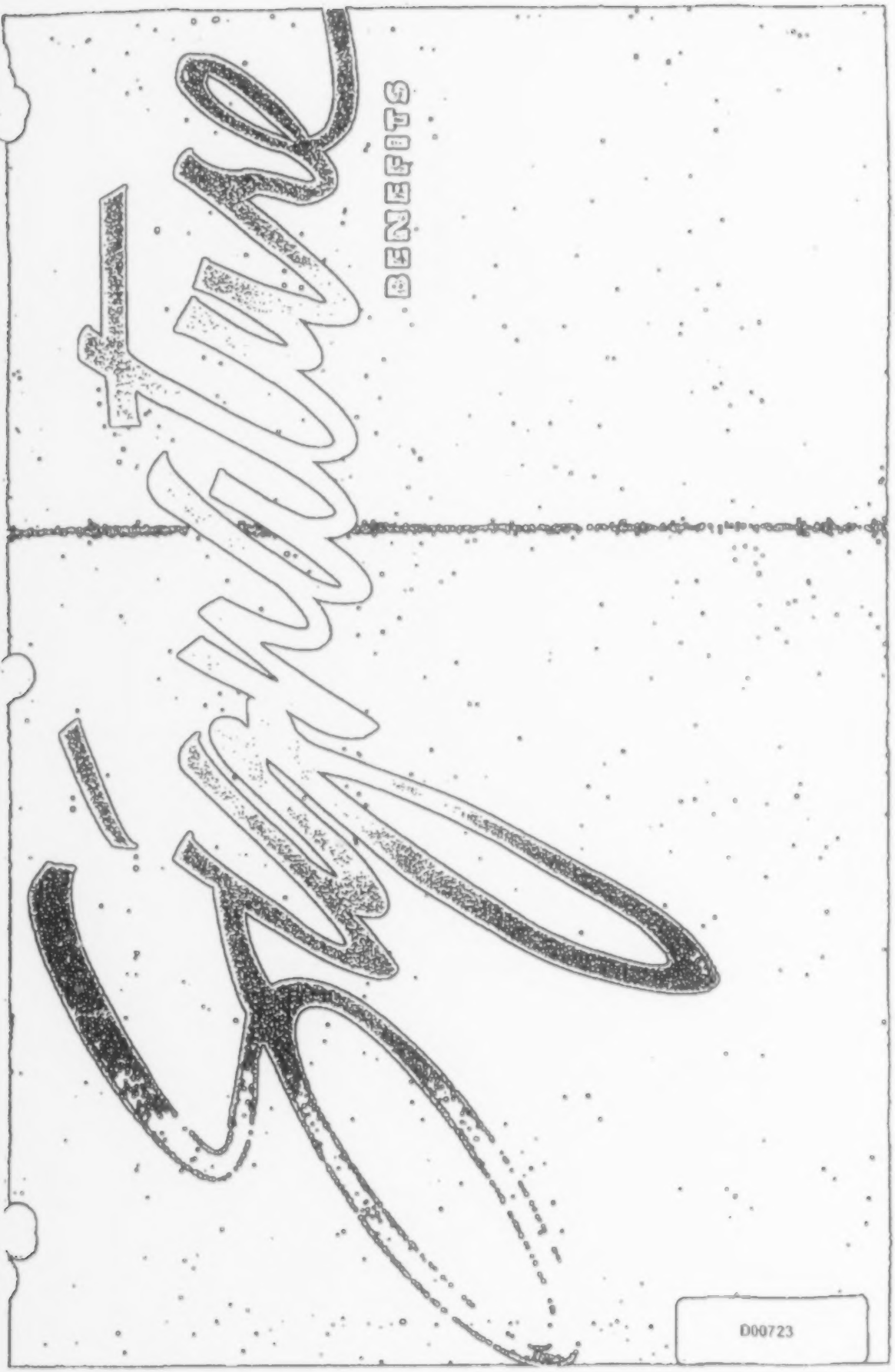
BENEFITS
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Retirement Program Changes

Q How is the retirement program changing?

A Effective January 1, 1998, CIGNA will replace the current Pension Plan with a new retirement plan for most employees. The new plan is an account balance plan. Like traditional pension plans, account balance plans provide secure, company-funded retirement benefits. These plans are simpler to understand, however, since they measure benefits as a growing account balance. In many ways, the new plan resembles the SIP Plan, but with all contributions and investments made by the company. The new plan will be called the *CIGNA Retirement Plan.*

As part of our strategy to provide a competitive benefits program, we are also making improvements to SIP. Participants in the SIP Plan will be eligible to receive a new variable matching contribution based on corporate performance. The new matching contribution, which will be invested exclusively in SIP's CIGNA Stock Fund, will make saving through the plan even more valuable.

In addition, to give you more investment choices for your contributions and the fixed 50% match, we are adding three new investment options to SIP. All of these changes take effect on January 1, 1998.

Table of Contents

Retirement Program Changes	2
Current Pension Benefits	4
New Plan Benefits	5
Benefit Payments	8
Enhancements to SIP	9
More Information	11

Q Why is CIGNA changing the retirement program?

A There are several reasons for the change:

We want to improve the competitiveness of our benefits program and thus our ability to attract and retain top talent. The enhancements to the plans will make our retirement program more competitive with those offered by other companies in our industry. Many companies have already moved to account balance retirement plans, and a large number of others are headed in that direction. The changes will help us attract and retain employees in a marketplace that is getting more and more competitive.

We want to meet the changing needs of a more mobile employee workforce. The new CIGNA Retirement Plan provides more portable retirement benefits. If you leave the company before retirement, you can take your benefits with you (as long as you are vested). In addition, benefits will grow faster during the early part of your career. This helps you to earn a fair benefit from the plan, whether you work here 5 years or 20.

We want to make a stronger tie between benefits and performance and allow employees to share in CIGNA's success. We each have a stake in the company's success. Now, through the variable matching contribution to SIP, there will be an even stronger link between our total compensation and corporate performance. Because the new variable match will be invested in CIGNA stock, your ownership stake in the

company will become stronger, as will the benefits you receive from the company's long-term success.

We want to provide retirement benefits in a form that people can understand. The new plan is far easier to understand than the current Pension Plan. Just as important, it coordinates well with the SIP Plan, so that you can easily understand your total retirement package, monitor its growth and plan for your future financial security.

Q How much money is CIGNA saving with these changes?

A None. CIGNA is *not* reducing the overall amount it contributes for retirement benefits, nor has the new program been designed to save money. The company had a different set of objectives, including competitiveness, flexibility, increased ownership in the company and simplicity. In fact, the company could spend more on retirement benefits in the future if its performance warrants a high variable matching contribution to the SIP Plan.

Q Why are some employees not affected by the pension changes?

A Employees who were hired before 1989, who are not in a CIGNA HealthCare division healthplan company, and whose age and service total at least 45 years, will remain in the CIGNA Pension Plan, and their retirement benefit will be determined under that plan's formula.

There are several reasons why these employees will stay in the current plan. *First*, over the many years they have worked at CIGNA, these employees—many of whom are close to retirement eligibility—have earned substantial benefits under the current Pension Plan. *Second*, these employees are entering the career stage in which the current Pension Plan provides the highest growth in benefits. These employees couldn't match this benefit growth under the new plan. And *third*, these employees have based their financial and retirement planning on the assumption that they will continue to earn benefits under the CIGNA Pension Plan. Changing their retirement plan now could disrupt their financial plans, possibly leaving them without enough time before retirement to recover from this disruption.

To be fair, we will maintain these employees in the current plan. Other employees and all new hires will be able to earn comparable benefits as career employees under the CIGNA Retirement Plan.

Q I was hired prior to 1989. Why wasn't I allowed to stay in the Pension Plan?

A If you were hired prior to 1989 but your age and service total less than 45 years, you were moved to the new Retirement Plan. Our analysis showed that, in comparison to people with a higher age and service combination, you have plenty of time to take full advantage of the many attractive features of the Retirement Plan, plus you will have access to the new lump sum payment option.

Competitiveness

Current Pension Benefits

Q **What will happen to the benefits I have earned under the Pension Plan?**

A Benefits that you have earned under the current Pension Plan will be converted to an opening account balance in the new CIGNA Retirement Plan. Your opening balance will equal the lump sum value of your pension benefits as of December 31, 1997. This amount will be calculated during the spring of 1998, once we have all the year-end payroll data for 1997. It will then be added to your new plan account retroactive to January 1, 1998. You will earn no further benefits under the Pension Plan after December 31, 1997. Starting in 1998, you will earn benefits under the new plan.

Q **How do I know that the lump sum conversion is fair and accurate?**

A The conversion factors we are using to determine your opening account balance are based on guidelines established by the government to ensure a fair transition for employees. For employees whose age and service total 55 years or more, we will use special conversion rates that provide slightly larger opening balances. Because these employees are nearing retirement eligibility, they will have less time to accumulate benefits under the new plan; the special conversion factors will help to "jump-start" their retirement accumulation in the new plan.

Q **If I retire within the next 12 months or so, will my current benefits change?**

A If you are eligible for the new CIGNA Retirement Plan, all of your benefits earned under the current Pension Plan through December 31, 1997, will remain yours. As of January 1, those benefits will be transferred to the new plan, and you will start earning additional benefits under the new plan. If you are retiring in 1998, one significant change is that you can receive your retirement benefits in a lump sum payment or as a monthly annuity.

Q **Will the change to the new Retirement Plan affect my eligibility for retiree life insurance and medical benefits?**

A Currently, employees who were hired prior to 1989 become eligible for all retirement benefits when they reach age 55 and have completed at least 10 years of service. Employees hired in 1989 or later also become eligible for all retirement benefits at age 55, but must complete 15 years of service. Beginning in January, all CIGNA Retirement Plan participants will be eligible for all retirement benefits (including retiree medical and life insurance) at age 55 with 15 years of service. All employees who were hired before 1989 and who will participate in the new plan will have at least 15 years of service when they reach age 55 if they continue to work at CIGNA until then. Because of this, the change in eligibility requirements will have no *actual* effect on your ability to receive retirement benefits at age 55.

New Plan Benefits

Q **Do I have to enroll in the new Retirement Plan?**

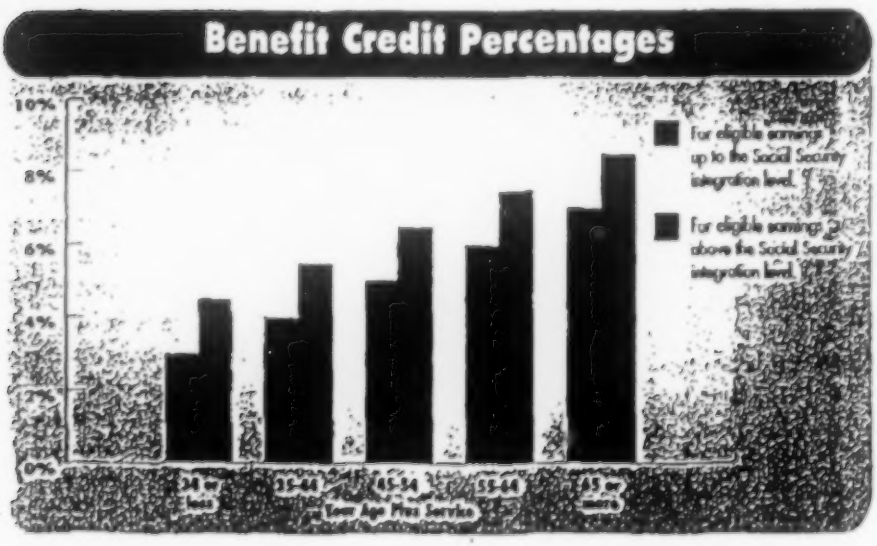
A No. Employees eligible for the new plan will be automatically enrolled in the CIGNA Retirement Plan for January 1, 1998. You may, however, complete a beneficiary designation form (provided in this kit). You may name any beneficiary you wish, but, if you are married, your spouse will automatically be your beneficiary unless you receive spousal consent (witnessed by a notary) to name someone else.

Q **Do I have to contribute to the new Retirement Plan?**

A No. CIGNA will make all contributions to the Retirement Plan, as it does to the current Pension Plan. If you want to save for retirement while earning additional company matching contributions, however, the SIP Plan allows you to contribute up to 16% of your pay through payroll deductions (subject to certain limits if you are a highly compensated employee).

Q **How will I earn benefits under the new plan?**

A Each year, you will earn *benefit credits* under the Retirement Plan based on your age, eligible earnings and service with the company. These benefit credits will be allocated to your plan account and will range from 3% to 8.5% of your eligible earnings. The company will also credit your account with interest credits. The annual interest rate will vary from 4.5% to 9%, depending on recent five-year Treasury Bond yields.



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Q **How will my benefit credits be determined?**

A Your benefit credits will depend on the total of your age and service with the company at the beginning of the calendar year. This total is referred to as your *points*.

Your benefit credits will also vary, depending on whether the income for which the credit applies is above or below the Social Security integration level. The Social Security integration level will be $34,000 in 1998 and 50% of the Social Security taxable wage base in future years. (The Social Security taxable wage base is the amount of income on which you pay Social Security taxes. It is adjusted every year.)

As an example, if your salary is $40,000 in 1998, you would get one benefit credit for your pay up to the integration level of $34,000 and a larger benefit credit for the remaining $6,000 of your pay above the integration level.

Q **Why will benefit credits be higher for employees with more service?**

A There are two reasons for this. *First*, because CIGNA values long service and the strength it adds to our company, we want to reward employees who make a long-term commitment to the company. *Second*, the nearer employees get to retirement, the less time they have to earn compounded interest on their benefit credits. Larger benefit credits help make up for fewer future interest credits.

Q **Why are there extra benefit credits on pay above the Social Security integration level?**

A There are two reasons. *First*, Social Security provides limited benefits on pay above the integration level. The extra benefit credit percentage helps compensate for this, so that your total retirement benefit from the Retirement Plan, SIP and Social Security, if you work at CIGNA for your career, will be a reasonable percentage of your preretirement income. *Second*, the company pays no Social Security taxes on income above the Social Security wage base. The extra credits help compensate for the cap on Social Security benefits and associated payroll taxes.

Q **The new plan looks a lot like SIP. Why didn't CIGNA just put the money into SIP?**

A There are some similarities between the new plan and SIP, but there are also some important differences. A key difference between the plans is that the benefits you earn under the Retirement Plan are more secure. Unlike your SIP account, you cannot have an investment loss in your Retirement Plan account. Also, Retirement Plan benefits are insured (up to certain amounts) by the government-sponsored Pension Benefit Guaranty Corporation. Providing you with a secure retirement benefit at company expense is an essential part of the total compensation package we offer in return for your work contributions. A plan like SIP provides many benefits as well, including the opportunity for larger investment gains. But your SIP account balance is also exposed to investment risk and is not guaranteed by either the company or the government.

D00728

Q In SIP, I can choose how to invest my funds. Why can't I do the same in the Retirement Plan?

A Your Retirement Plan account is a bookkeeping account only. The benefit and interest credits added to it measure the amount owed to you by the plan but do not represent actual assets set aside to fund your benefit. Instead, all plan benefits are paid out of a single pension fund, which is managed and invested by the pension trustee. Funding your benefit in this way makes your benefit more secure for two reasons. *First*, CIGNA bears all the investment responsibility and investment risk. You cannot have an investment loss as you might in a plan like SIP, where assets are added to an account that you manage and invest yourself. *Second*, this funding method allows Retirement Plan benefits to be insured (up to certain amounts) by the Pension Benefit Guaranty Corporation. This creates additional security for your benefits, which could not be realized in a plan like SIP.

Q How do the interest credits in the new plan compare with interest rates in the SIP Fixed Income Fund?

A Both rates are tied to fixed income securities. Because of this, the two rates may often be similar, although they will rarely be the same. The interest credit in the Retirement Plan is set annually, based on IRS guidelines. It equals the yield on newly issued five year U.S. Treasury Bonds, plus 0.25 percentage points—subject to a maximum annual rate of 9% and a minimum annual rate of 4.5%.

For example, if the yield on a five year Treasury Bond were 6% at the beginning of the year, the annual Retirement Plan interest credit would be 6.25%. If Treasury Bond yields were just 3%, the annual interest credit would be the minimum 4.5%.

The Retirement Plan interest credit can move up or down from year to year, depending on how interest rates move in the economy. The SIP Fixed Income Fund rate will change as well, but more slowly, since it is based on multiple-year investments in the bond market, commercial mortgages and loans.

Q Will my benefit be better under the new Retirement Plan?

A The new Retirement Plan is different from the current Pension Plan, so exact comparisons of benefits that cover all possible outcomes are difficult. Generally speaking, the new Retirement Plan, in comparison with the current Pension Plan, tends to provide larger benefits for shorter-service employees and comparable benefits for longer-service employees. With the new variable SIP match, employees who contribute 6% of their pay to SIP might earn larger total retirement benefits than in the past—assuming company performance is strong enough for the variable match to be allocated regularly.

Of course, other features of the new plan add to your benefit value as well. The lump sum distribution option can be very valuable, since it will allow you to move your benefits into other tax-deferred investments after you retire or leave CIGNA. Also, because the Retirement Plan works like a savings plan, with contributions credited to an account, you should find it easier to understand. You now have two plans that are account-based, enabling you to track your retirement benefits by looking at your statements. As a result, you will see the growth in your total retirement benefits from CIGNA every year and will be able to update your financial plans accordingly.

Benefit Payments

Q **How will my benefit from the Retirement Plan be paid?**

A When you retire from or leave CIGNA, you may elect to receive your benefit as a single lump sum payment or as a series of monthly annuity payments. Employees who elect a lump sum can roll their account balance over into another employer's plan or an Individual Retirement Account (IRA). Rollovers will not be subject to income taxes until they are withdrawn from the rollover account.

Q **When will my benefit be paid?**

A You may receive a lump sum payment or begin receiving a monthly annuity from the Retirement Plan at any time after you leave the company. You may also defer payment to any date until you reach age 70½.

Q **Why is there a five-year vesting requirement for benefits?**

A A five-year vesting requirement is typical of retirement plans like this, and is the same vesting requirement that is used for the current Pension Plan. CIGNA believes that retirement benefits funded by CIGNA shareholders should be paid only to those who have made a long-term contribution to CIGNA's success. Providing benefits to employees with very short service adds substantially to company expense. Vesting requirements help us control these costs so that more money can be spent on benefits for employees who work for CIGNA for at least five years.

Q **What happens if I die before receiving my benefit?**

A If you die before receiving your Retirement Plan benefit, your designated beneficiary will be eligible to receive your entire vested benefit. You may name any beneficiary you wish, but, if you are married, your spouse will automatically be your beneficiary, unless you receive spousal consent (witnessed by a notary) to name someone else. If you are not vested when you die, no benefits will be paid at your death.

Q **What happens if I become disabled?**

A You are considered disabled if you are eligible for the company's Long Term Disability Plan. If you become disabled while a participant in the Retirement Plan, you will continue to earn interest credits during your disability. You will not receive benefit credits during your long-term disability. When you return to CIGNA after your disability ends, you will receive benefit credits based on your eligible earnings after you return.

D00730

Enhancements to SIP

Q How is SIP changing on January 1?

A CIGNA is improving SIP in two important ways. First, we are adding a variable matching contribution, in addition to the regular 50% company match. This variable matching contribution will be made no more than once a year and will be tied to company performance. It will be given only in years when CIGNA meets or exceeds business goals. The first possible variable match may be made early in 1999, based on corporate performance in 1998.

The second improvement to SIP is the addition of three new investment funds. These new funds provide employees with additional stock investment options. With the Retirement Plan providing a secure core benefit, many employees may feel more confident to seek higher returns using SIP's more aggressive investment options.

Q How does the variable match work?

A Each year, CIGNA will set performance targets that will be used to determine the size of the variable match for the year. After year end, when financial results have been reported, the People Resources Committee of CIGNA's Board of Directors will evaluate the company's performance in relation to the targets. Based on this evaluation, the People Resources Committee will determine the size of the variable match, if any, that will be made. The match will range from 0% to 33⅓% of the first 6% of eligible earnings that you have contributed to the plan over the past year. In other words, you could get an additional 2% of pay (one-third of 6%) added to your SIP account. The match will be deposited into your SIP account in the spring following the close of the year to which the match applies. To receive the variable match, you must be employed on the last day of that year by a CIGNA company that participates in SIP.

The variable match will be invested exclusively in the CIGNA Common Stock Fund to allow you to share in the company's long-term growth.

Q What are the variable match performance targets for 1998?

A The targets are currently being developed and will be announced early in 1998. If goals are met during 1998, the People Resources Committee could approve the first variable match to your account in the spring of 1999, based on your 1998 SIP contributions.

Q Why is it important that I participate in SIP?

A CIGNA's retirement benefits program is designed to provide you with a competitive total package when you take into account benefits from three different sources: the Retirement Plan, SIP and Social Security. Your participation in the Retirement Plan and Social Security is automatic, but you must elect to participate in SIP.

If you don't participate in SIP, you don't receive any matching company contributions, which are an integral part of the benefits you will need in

order to replace your preretirement income. You also miss out on tax savings and investment earnings. In fact, you sacrifice an important CIGNA benefit. To reap the full benefits of your retirement program, you should contribute at least 6% of your eligible earnings to SIP on a steady, long-term basis.

Q Will I get the variable match if I contribute less than 6% of my eligible earnings to SIP?

A As with the fixed 50% match, the variable match will be made on your contributions up to 6% of your eligible earnings. If you contribute less than 6% of your pay to SIP, you will still get a variable match, but it will not be the maximum amount possible. You will get the full company matching contributions—both variable and fixed—only if you contribute at least 6% or more of your eligible earnings to the plan.

Q Can I invest the variable matching contributions in a fund other than the CIGNA Common Stock Fund?

A No. All variable matching contributions must remain invested in the CIGNA Common Stock Fund until you retire or terminate employment. This match is based on corporate performance and is then further linked to the long-term success of the company through the CIGNA stock investment. If you leave CIGNA and keep your SIP account open, you may keep your existing variable match balance in the CIGNA Stock Fund or move all or part of it to any other investment fund offered in SIP.

Q Is the vesting schedule the same for the variable match as it is for the fixed match?

A Yes, the vesting schedule is the same for all company matching contributions, both fixed and variable. Vesting is the technical term for gaining ownership of your benefits. You must be vested in your company contributions to be able to keep them when you retire or leave the company. If you retire or leave before you are vested, you will forfeit your company matching contributions.

You vest in 20% of your total company matching contributions (including any investment gains or losses on these contributions) for each year of service you earn at CIGNA. You are always fully vested in your own contributions to the plan. The table below summarizes the vesting schedule for company fixed and variable matching contributions and associated investment earnings.

Vesting Schedule for Company Contributions to SIP

Years of Service	Vested %
Less than 1	0%
1	20%
2	40%
3	60%
4	80%
5 or more	100%

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More Information

Q **I don't know what my current pension benefit is. How do I find out?**

A You recently received a Signature Benefits *Total Compensation Report*, which shows your Pension Plan benefit as of March 31, 1997. You will receive a similar statement in the spring of 1998, showing your final benefit under the Pension Plan, plus your CIGNA Retirement Plan opening account balance. Your opening account balance will be the lump sum value of your final Pension Plan benefit, which will be transferred to the new CIGNA Retirement Plan. Remember, final pension benefits and opening balances will not be calculated until the spring of 1998, after all 1997 payroll data have been finalized.

Q **Will my SIP account statement also include my balance under the new CIGNA Retirement Plan?**

A Through 1998, we will continue to provide you with quarterly SIP account statements, plus an annual *Total Compensation Report*, which includes information on both your SIP and Retirement Plan balances. Beginning in 1999, we plan to provide you with consolidated SIP and Retirement Plan quarterly statements to help you monitor the build-up of your retirement benefits. Employees who are remaining in the Pension Plan will continue to see the growth of their pension benefit in the annual *Total Compensation Report*.

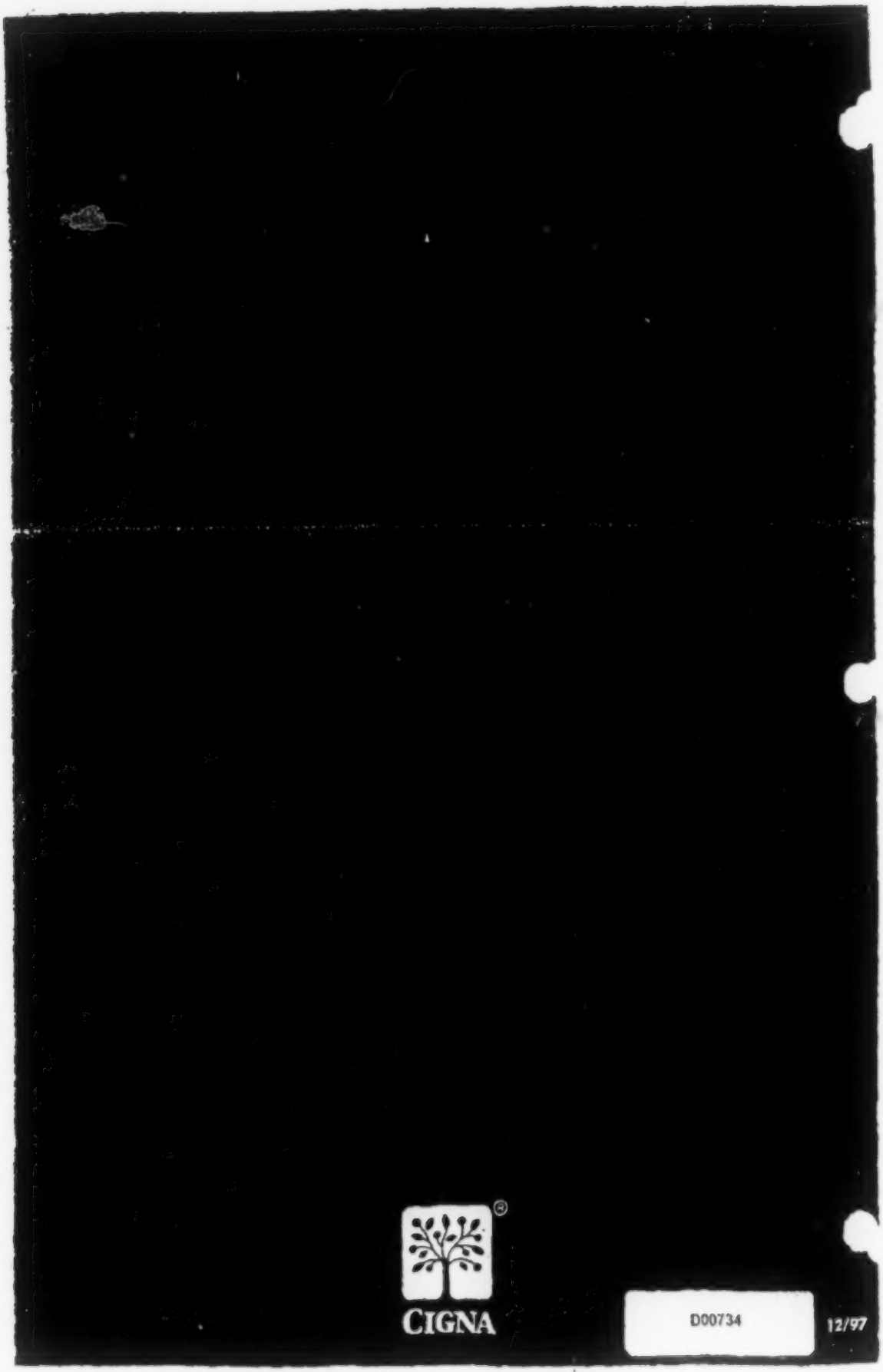
Q **I already contribute the maximum allowed to SIP. Does the company offer any other savings and investment opportunities?**

A You may also invest in mutual funds and other securities through CIGNA Financial Services. Your contributions can be made through payroll deductions. For more information, call 1.888.CIGNA.FS (1.888.244.6237).

Q **Where can I get more information on SIP?**

A A new SIP Summary Plan Description (SPD) and Prospectus have been sent to you. The variable match and other important information about SIP are described in the SIP SPD and Prospectus.

These pages provide answers to questions that you may have about the retirement program changes. If you have additional questions about the Retirement Plan, you may e-mail your questions to Signature Benefits Services (e-mail address: Signature Benefits, Svcs), or you may call Signature Benefits Services at network 761.3539 or 1.800.551.3539. If you have additional questions about SIP, you may call CIGNA's AnswerLine® at 1.800.253.2287.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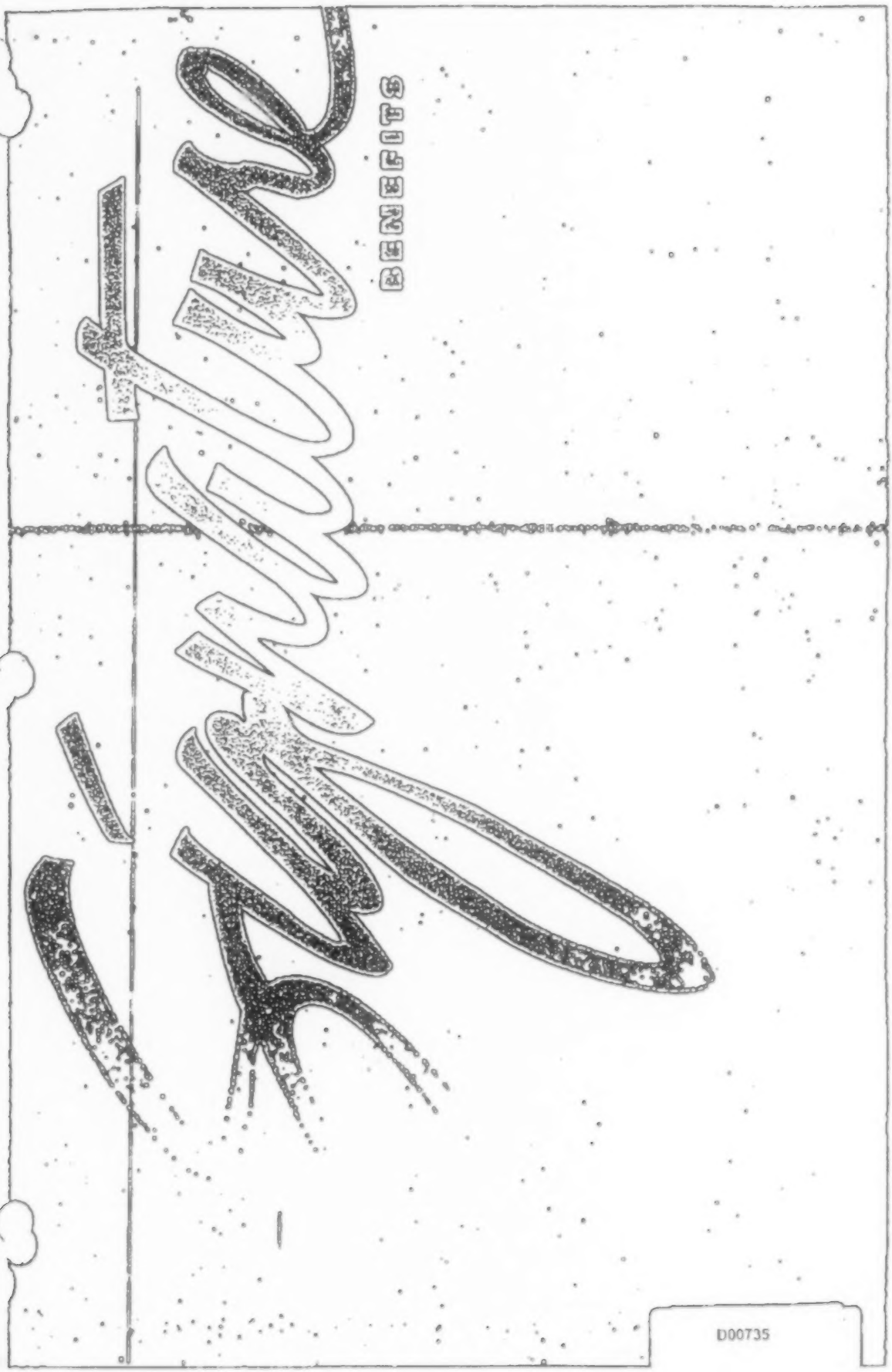
BENEFITS
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This brochure includes certain key features of CIGNA's retirement benefits program. It does not, however, cover every detail included in the plan document, trust agreement or other contracts that govern the plan. Every attempt has been made to ensure the accuracy of the information in this brochure. If there is any discrepancy between the contents of this material and the official plan documents and contracts, the plan documents and contracts will govern.

CIGNA plans to continue the retirement program indefinitely but reserves the right to amend or terminate any plan at any time and for any reason. This brochure does not create a contract of employment between CIGNA and any employee.

"CIGNA" refers to CIGNA Corporation and/or any of its subsidiaries that employ most "CIGNA employees."

Table of Contents

Your CIGNA Retirement Program	2
The CIGNA Retirement Plan–Providing Benefit Security	3
■ Eligibility and Enrollment	3
■ How Your Benefit Grows	4
■ Vesting	7
■ When Benefits Are Paid	7
■ How Benefits Are Paid	7
■ If You Die Before Retiring	9
■ Account Statements	9
The SIP Plan–Providing Benefit Opportunity	10
■ Eligibility and Enrollment	10
■ Building Your SIP Account	11
■ Investing Your Plan Savings	13
■ SIP Vesting	14
■ Changing Your SIP Elections	14
■ Receiving Your Plan Account	15
■ Quarterly Statements	16
A Final Word	17

Looking to the future

Your CIGNA Retirement Program

It's never too early or too late to start planning for the future. Your retirement may be decades away or just around the corner, but the sooner you start planning and saving, the better off you'll be financially when you decide to retire.

CIGNA contributes to your long-term security in two ways:

- **The CIGNA Retirement Plan,** which provides you with a secure, company-funded benefit, and
- **The Savings and Investment Plus (SIP) Plan,** which provides you with an opportunity to increase your benefits through personal savings, tax deferrals and company matching contributions.

CIGNA also helps you to prepare for retirement by paying the employer's share of Social Security taxes on your income up to the Social Security taxable wage base ($68,400 in 1998). You help contribute to your financial security by saving through SIP and by paying your share of Social Security taxes.

The CIGNA retirement program is designed so that long-service employees can build adequate retirement income through a combination of their Retirement Plan, contributions to SIP and Social Security benefits. The program is also designed to provide shorter-service employees with a foundation on which they can build after they leave CIGNA.

This brochure describes the key features of your two CIGNA retirement benefit plans. Please read it carefully, keeping in mind that you financial security depends on your active partnership with CIGNA. If you have questions that this brochure does not answer, you may contact:

For Retirement Plan information:
Signature Benefits Services
1601 Chestnut Street
TLP 17F
P.O. Box 7716
Philadelphia, PA 19192-2174
Network: 761.3539; or 1.800.551.3539
E-mail address: Signature Benefits, Svcs

For SIP information:
CIGNA Companies
SIP Plan Management-H6A
280 Trumbull Street
P.O. Box 2975
Hartford, CT 06104-2975
CIGNA's AnswerLine® 1.800.253.2287

Key advantages of the Retirement Plan

The plan provides a secure benefit, funded solely by the company. There is no cost to you and no investment risk.

Your benefit is insured by the Pension Benefit Guaranty Corporation, a government agency that regulates pension plans.

The plan is easy to understand and use. You get regular account statements, so you know exactly how your benefit is growing.

The plan provides flexible payment options. When you retire or leave CIGNA, you may receive your account balance in a lump sum payment or in monthly annuity payments.

The CIGNA Retirement Plan—Providing Benefit Security

The CIGNA Retirement Plan will replace the CIGNA Pension Plan for most CIGNA employees on January 1, 1998. The new plan is an account balance plan. Your retirement benefit under the plan is measured by a growing account balance. In many ways, the plan resembles a savings account, except that the company makes all the contributions. Because of this simple design, the plan is easier to understand than a traditional pension plan. Here's a brief overview of the plan's key features:

- You begin participating in the plan automatically when you are hired. If you are an employee on January 1, 1998, you will begin participating in the plan on that day.
- Your account balance grows through a series of quarterly benefit credits and interest credits made by the company. Your account balance is the sum of all your accumulated benefit credits and interest credits. You will receive this balance if you elect a lump sum benefit distribution from the plan (assuming you are vested).
- If you are employed on January 1, 1998, and earned benefits under the CIGNA Pension Plan before 1998, you will be credited with an opening account balance equivalent to the pension benefit you earned through December 31, 1997.
- You are 100% vested in your account after five years of service. Any service that you earned before January 1, 1998, will count toward the vesting requirement under the Retirement Plan.
- Once you are vested, you may receive your plan balance when you retire or leave CIGNA. You may choose a lump sum or an annuity (monthly payments for life). You may also defer receipt to a later date. Your beneficiary will receive your account balance if you die before receiving it yourself.

The remainder of this section provides more detail on these and other features of the plan.

Eligibility and Enrollment

If you are an employee of a participating company on January 1, 1998, you will automatically become a participant in the Retirement Plan on that day (unless you are notified that you will remain in the CIGNA Pension Plan). Any benefits that you have earned under the CIGNA Pension Plan will be converted to an opening account balance in the new plan.

If you are hired or rehired after January 1, 1998, you will become a participant in the Retirement Plan on your date of hire. There are no forms to fill out to participate in the plan, but you may want to complete a beneficiary designation form. If you are married, your spouse will automatically be your beneficiary, unless he or she agrees in writing to your naming someone else. If you are single, you may name any beneficiary you wish. See page 9 for information on automatic beneficiary designations.

Growing Over Time

How Your Benefit Grows

When you begin participating in the Retirement Plan, an account will be set up in your name to record the accumulation of ongoing benefit credits and interest credits. Each dollar's worth of credits is a dollar of retirement benefits payable to you after you are vested. Under the plan, your benefit will grow steadily throughout your career as credits are added to your account. If you participated in the CIGNA Pension Plan before 1998, you may also have an opening account balance. Here are the ways your benefit may grow:

Your Opening Account Balance

If you were an employee before 1998, any benefit you earned under the CIGNA Pension Plan through December 31, 1997 will be converted to an opening account balance in the Retirement Plan. The opening balance will equal the lump sum value of the pension benefit you earned through December 31, 1997.

Benefit Credits

For each year in which you earn a year of credited service, CIGNA will add a benefit credit to your account equal to a percentage of your annual eligible earnings. The percentage will depend on your benefit points, which are the sum of your age and credited service as of January 1 of the year. Benefit credits are made according to the chart below.

The Retirement Plan is designed to work together with Social Security. As the chart shows, the plan provides a higher benefit credit for the portion of your eligible earnings above the Social Security "integration level." The integration level will be $34,000 in 1998 and 50% of the Social Security taxable wage base thereafter.

Your Benefit Credits

Your Points (your age at the beginning of the year plus your credited service)	Credit (as a percentage of your eligible earnings)	
	For earnings below the integration level	For earnings above the integration level*
Under 35	3%	5%
35 to 44	4%	6.5%
45 to 54	5%	6.5%
55 to 64	6%	7.5%
65 or more	7%	8.5%

*The integration level is $34,000 in 1998 and 50% of the Social Security taxable wage base thereafter.

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If you become disabled or take a leave of absence

The additional credit for income above the integration level reflects the fact that there are no Social Security retirement benefits for income above the taxable wage base. Neither you nor CIGNA pays Social Security retirement taxes on your income above the Social Security taxable wage base, so CIGNA shares some of these tax savings with you through this extra credit.

Once you terminate employment or take a distribution from the plan, benefit credits will no longer be made to your account.

Interest Credits

Your account balance will also grow through interest credits. The annual interest rate will equal the yield on 5-year Treasury Bonds as of November of the previous year, plus 0.25 percentage points. In no case, however, will the annual interest rate be less than 4.5% or greater than 9%. These interest rates are consistent with guidelines established by the IRS for account balance plans.

Interest credits will be made to your account until you take a distribution of your plan benefit.

Quarterly Posting of Credits

While you are working at CIGNA, benefit and interest credits will be added to your account quarterly. Interest credits will be calculated using your account balance at the end of the quarter, but before benefit credits have been made. The quarterly posting of benefit credits is merely a projection until you meet the 1,000-hour service requirement to earn benefit credits during the year. You continue to earn quarterly interest credits until you receive your benefit from the plan, regardless of whether you are eligible for benefit credits.

Your Eligible Earnings

For purposes of determining your benefit, your *eligible earnings* will include the following:

- Your base salary or wages each year
- Overtime pay
- Shift premium or differential pay
- Most annual incentive pay and bonuses
- Commissions paid by participating companies

If you take an unpaid leave of absence or become disabled and are eligible for Short Term Disability benefits, CIGNA will continue to allocate benefit and interest credits to your account for a maximum of six months, but not after you terminate employment with CIGNA.

While on an unpaid leave or a short term disability leave, your benefit credits will be based on your annualized base salary on the date your leave or disability begins.

If you are on a *paid* leave of absence, CIGNA will continue to allocate benefit and interest credits to your account during your absence. In this case, your benefit credits will be based on your pay during your leave.

While you are receiving Long Term Disability benefits, you will receive only interest credits. No additional benefit credits are allocated until you return to work.

Examples of Annual Benefit Credits*

	Annual Benefit Credits				
Eligible earnings	Less than 35 points	35 to 44 points	45 to 54 points	55 to 64 points	65+ points
$30,000	$ 900	$1,200	$1,500	$1,800	$2,400
$50,000	$1,740	$2,240	$2,740	$3,240	$4,240
$70,000	$2,640	$3,340	$4,040	$4,740	$6,140

*Points equal age plus credited service. Assumes a plan integration level of $34,000.

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Eligible earnings will also include your before-tax contributions to SIP or to any of CIGNA's flexible benefit plans.

Keep in mind that the IRS limits the amount of eligible earnings that can be considered in determining your benefit credits. This IRS limit is $160,000 in 1997 and will be adjusted periodically to reflect changes in the cost of living.

Credited Service

Credited service includes all your service with any CIGNA company that participates in the Retirement Plan, including any credited service you earned prior to 1998. You earn a year of credited service for any calendar year in which you earn at least 1,000 hours of service. An hour of service is generally any hour for which you receive pay from a CIGNA company, whether or not you are actually working.

Examples of Your Benefit

To see how your account grows, let's look at a couple of examples. In each example, we will assume that the plan's integration level for the year is $34,000 and the rate used in determining the interest credit is 6.5%.

Examples

1 Dan

Opening account balance	$ 1,890
Interest credit (assuming 6.5%)	$ 155
Benefit credit (4% x $30,000)	$ 1,200
Dan's account balance at the end of the year	$ 3,245
Dan's account balance at age 55	$100,075
Dan's account balance at age 65	$263,280

Example 1: Assume that Dan is 35 years old, earning $30,000 a year, and has 5 years of service with CIGNA. Let's also assume that his opening account balance (from the discontinued Pension Plan) is $1,890. Because Dan's age and service total 40 points, he qualifies for a benefit credit of 4% of eligible earnings.

2 Joan

Opening account balance	$ 24,625
Interest credit (assuming 6.5%)	$ 1,750
Benefit credit (6% x $34,000) + (7.5% x $36,000)	$ 4,740
Joan's account balance at the end of the year	$ 31,115
Joan's account balance at age 55	$163,310
Joan's account balance at age 65	$278,870

Example 2: Assume that Joan is 50 years old, earning $70,000 a year, and has 6 years of service with CIGNA. Let's also assume that her starting account balance is $24,625. Because Joan's age and service total 56 points, she qualifies for a benefit credit of 6% of eligible earnings up to the integration level and 7.5% above the integration level.

Note: The projections for benefits at age 55 and 65 assume no increase in eligible earnings and a consistent annual interest credit rate of 6.5%.

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When you leave CIGNA

Vesting

To receive a benefit from the plan, you must be vested. Under the Retirement Plan, you become vested in your account once you have completed five years of vesting service with CIGNA. You receive a year of vesting service for each calendar year in which you receive at least 1,000 hours of service with any CIGNA company while it is affiliated with CIGNA. An hour of service is generally any hour for which you receive pay from a CIGNA company, whether or not you are actually working.

If you leave the company before completing five years of vesting service, you will not be eligible to receive any benefit from this plan.

When Benefits Are Paid

You or your beneficiary may receive your full vested Retirement Plan benefit when you:

- Leave CIGNA for any reason,
- Retire, or
- *Die*

If you wish, you or your beneficiary may keep your account balance in the plan and continue to earn interest. Keep in mind that, if you are disabled and become eligible for Long Term Disability benefits, you will continue to earn additional interest credits but no new benefit credits (see page 5).

How Benefits Are Paid

When you retire or leave CIGNA, you will need to decide how to receive your plan benefit. The normal form of payment is an annuity payable over your lifetime (or the joint lives of you and your spouse, if you are married). You may waive this form and choose to receive your account balance as a lump sum or one of the other optional payment forms described on page 8.

Lump Sum Form of Payment

One of the advantages of an account balance type of retirement plan is that it allows you to receive your benefit as a single lump sum payment. If you're married and elect this form of payment, you must have your spouse's written consent, witnessed by a notary public.

To postpone paying taxes on a lump sum payment, you may roll your money directly into an Individual Retirement Account (IRA) or another qualified retirement plan. If you do so, you will be taxed only when you take money out of the IRA or your other employer's plan.

You may choose to:

- **Receive your account as a lump sum payment;**
- **Begin receiving your account as an annuity; or**
- **Defer payment of your account to any later date.**

If you defer payment, your account will continue to earn interest credits until paid to you. You may elect a lump sum or an annuity at that time.

What is an annuity?

An annuity is a monthly payment for a specified period of time. Annuity payments are subject to income taxes in the year you receive them.

There are various types of annuities—including single life and joint and survivor. The single life annuity provides monthly benefits over your lifetime only. The joint and survivor annuity provides monthly benefits over your lifetime and, if you die before your beneficiary, the lifetime of your surviving beneficiary.

Keep in mind that, if you elect an annuity other than a single life annuity, your benefit will be reduced to allow for continued payments over more than one lifetime.

Normal Forms of Payment

Unless you elect the lump sum option or another optional payment form, your account will be paid in the normal form of payment:

- *If you're single,* the normal form of payment is a single life annuity. In a single life annuity, you receive monthly payments for your lifetime only. When you die, payments end.
- *If you're married,* the normal form of payment is a 50% joint and survivor annuity. This form provides smaller monthly payments to you for life than are provided by a single life annuity. If your spouse outlives you, however, he or she will receive 50% of your monthly payments for the rest of his or her lifetime.
- *If you leave and your account balance is $5,000 or less,* you will automatically receive your benefit as a lump sum when you leave.

Other Optional Forms of Payment

If the value of your benefit is at least $5,000, you may receive your benefit as one of the plan's optional forms of payment. All the optional forms of payment are actuarially equal in value to your account balance on the date your benefits begin. In addition to the lump sum option, your optional forms of payment include:

- *Single Life Annuity (with no cash refund).* If you're married, you may elect the normal form of payment for single participants. Upon your death, no further benefits will be paid.
- *Single Life Annuity (with cash refund).* This option is similar to the single life annuity except that, if you die before you have received the amount of your account balance in monthly annuity payments, the difference between your account balance and the amount you have received in annuity payments will be payable to your beneficiary in a lump sum. For example, if your account balance was $100,000 when you retired and you had received $75,000 worth of monthly annuity payments at your death, your beneficiary would receive a lump sum payment of $25,000. To account for this added protection, monthly payments under this option will be less than monthly payments under a single life annuity with no cash refund.
- *50% Joint and Survivor Annuity.* This option is similar to the normal form of payment for married participants, except that you may name anyone you wish as your beneficiary.
- *100% Joint and Survivor Annuity.* This option is similar to the 50% joint and survivor annuity, except that the monthly payments you receive will be smaller and the payments your beneficiary receives after your death will equal 100% of your payments, rather than 50%.

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If you're married and elect an option other than the 50% or 100% joint and survivor annuity with your spouse as beneficiary, federal law requires that you must have the written, notarized consent of your spouse.

If You Die Before Retiring

If you die after becoming vested but before you begin receiving your plan benefit, your beneficiary will receive the value of your Retirement Plan account. If you were married, your spouse will automatically be your beneficiary, unless he or she has consented in writing to your naming someone else.

Your beneficiary has a choice of receiving your benefit as a lump sum distribution or an annuity. If your beneficiary wishes to receive the lump sum option, that election must be made within one year of your date of death. Otherwise, payment will be in the form of an annuity.

Your beneficiary may begin receiving your benefit at any time after your death—immediately or deferred until a later date. If your beneficiary is someone other than your spouse, however, payment must begin no later than five full calendar years after your death. Although no further benefit credits will be made to your account after your death, interest credits will continue to be made to your account until your beneficiary begins to receive your benefit.

If you do not have a surviving spouse and you do not name a beneficiary to receive your Retirement Plan account, your benefit will be paid in a lump sum to the first available of the following:

- Your surviving natural and adopted children (in equal shares)
- Your surviving parent(s) (in equal shares)
- Your estate

Account Statements

To help you keep track of your account growth, you will receive periodic account statements. Each statement will show CIGNA's benefit credits and interest credits to your account and the value of your account at the end of each period. Benefit credits for the period covered by the statement will be based on the assumption that you will earn at least 1,000 hours of credited service for that year. If you don't complete the required service for a period, your account will be adjusted accordingly.

An opportunity to save . . .

The SIP Plan—Providing Benefit Opportunity

The Savings and Investment Plus (SIP) Plan provides you with an opportunity to increase your retirement benefits through personal savings, tax deferrals and company matching contributions. While participation in SIP is completely voluntary, the plan's matching contribution feature is an important part of your retirement benefits with CIGNA. Only by saving through the plan do you get CIGNA's matching contribution and the full value of your company retirement benefits.

Here's a brief overview of the plan's key features:

- You may begin participating in the plan at any time after you have completed one year of service.
- You may contribute up to 16% of your eligible earnings to the plan, subject to certain IRS limits.
- Your contributions are deducted from your pay before taxes and deposited in your account automatically.
- The company provides a *fixed* matching contribution equal to 50% of the first 6% of eligible earnings that you contribute to the plan.
- In addition to the fixed match, the company may also add a *variable* match when certain corporate performance goals are met or exceeded. Through this additional match, you could receive up to an additional 33⅓% of the first 6% of eligible earnings that you contribute to the plan. *Note:* If you are employed by a Healthsource company in 1997, you will *not* be eligible for the variable match.
- You choose how to invest all contributions to your account, except for the variable matching contributions. All variable matching contributions will be invested exclusively in the CIGNA Stock Fund to increase your ownership of the company and allow you to benefit from CIGNA's long-term growth.

The remainder of this section provides more detail on these and other features of SIP. For a more complete description of the plan, please see the SIP Summary Plan Description and Prospectus, included in your Signature Benefits binder.

Eligibility and Enrollment

Employees may join SIP at the start of any pay period after completing one year of eligible service with the company. You are credited with a year of eligible service if you complete at least 1,000 hours of service during your first 13 months at CIGNA or during any calendar year after that.

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Key advantages of SIP

The plan gives you an opportunity to increase your retirement benefits through smart saving and investing.

Saving through the plan is easy. Your contributions are deducted from your pay automatically.

Income taxes are deferred on your contributions and your earnings. This translates into significant tax savings.

The company matches a large portion of your contributions, increasing your overall savings.

The company may provide a variable match when corporate performance is strong, allowing you to share in CIGNA's success.

You have multiple investment options for your contributions and the company's fixed matching contributions to the plan.

To begin participating, call CIGNA's AnswerLine® at 1.800.253.2287. Through AnswerLine, you can select and confirm how much you want to save and how you want your savings to be invested. Your SIP enrollment will take effect during the first payroll cycle after you call.

If you decide not to begin contributing when you first become eligible, you may join the plan at any time by calling CIGNA's AnswerLine®.

Building Your SIP Account

Once you join the SIP Plan, an individual account is set up in your name. Your account can grow in five ways:

- Your regular (employee) contributions
- Company fixed matching contributions
- Company variable matching contributions
- Your rollover contributions
- Investment returns

Your Regular Contributions

You may contribute from 1% to 16% of your eligible earnings to the plan. (If you meet the IRS definition of a highly compensated employee, however, your contributions may be limited by the Plan Administrator to meet legal requirements.) For purposes of determining your regular contributions, eligible earnings include:

- Your base salary or wages each year, including your contributions to this plan or to a flexible benefits plan
- Overtime pay
- Shift premium or differential pay
- Most forms of annual incentive pay and bonuses
- Commissions paid by participating companies

Your contributions are deducted from your paycheck before federal—and in most states, state and local—income taxes are withheld. As a result, your taxable income is reduced when you contribute to the plan. When you receive your account balance at retirement (or earlier, if you withdraw the money), you pay taxes on your contributions and on any company matching contributions and investment earnings.

Contributing to the plan will not affect the level of your other pay-related CIGNA benefits—such as life insurance or Retirement Plan benefits. The value of these benefits continues to be based on your full earnings (as defined under those plans), which include your contributions to SIP. Before-tax contributions do not reduce your Social Security taxes or your Social Security benefits.

Special note for Puerto Rico residents: The SIP Plan does not qualify as a tax-deferred savings plan under Puerto Rico's current tax law. If you work in Puerto Rico, therefore, your regular contributions will be deducted from your pay on an after-tax basis.

IRS Limitations

The Internal Revenue Service limits the amount that you may contribute to SIP each year on a before-tax basis. That limit is $10,000 in 1998 and is adjusted periodically. Certain other legal limits may apply. You will be notified if you are affected by any of these limits.

Fixed Matching Contributions

To encourage you to save and to partner with you in saving for the future, CIGNA matches 50% of the first 6% of eligible earnings that you contribute to the plan. In other words, for every before-tax dollar you save up to 6% of your eligible earnings, CIGNA adds 50 cents to your account. These company matching contributions are allocated to your account at the same time as your regular before-tax contributions.

Your contributions above 6% are not matched by the company, but they share in the investment results of the plan and grow on a tax-deferred basis. Like your regular contributions, company matching contributions and their investment earnings are not taxed until you receive your money.

Special note to Healthsource employees: Employees of a Healthsource company who participate in the Healthsource Cash Balance Retirement Plan are not eligible for fixed matching contributions.

Variable Matching Contributions

Beginning on January 1, 1998, CIGNA may also make variable matching contributions on the first 6% of eligible earnings you contribute to the plan. These variable contributions are in addition to the company's fixed matching contributions and are made not more than once each year. To receive the variable match, you must be employed by a CIGNA company that participates in SIP on the last day of the calendar year.

The variable match will be based on company-wide performance. Performance targets will be established early during each calendar year. Once the year ends, corporate performance will be evaluated against targets. If performance is strong enough, a variable match will be made to the accounts of SIP participants. The variable match could be as high as 33⅓% of the first 6% of your eligible earnings that you save through the plan.

The SIP Variable Match—An Example

As an example of how the new variable match will work, assume that you earn $30,000 per year and save 6% of your eligible earnings through SIP. Here's how your own contributions and the company's fixed and variable matching contributions could add up. Remember, your variable matching contribution could be the minimum or maximum amount of the range or any amount in between, depending on company performance.

	With minimum 0% variable match	With maximum 33⅓% variable match
Your savings (6% of eligible earnings)	$1,800	$1,800
Fixed 50% match	$ 900	$ 900
Variable 0% to 33⅓% match	$ 0	$ 600
Total match (fixed plus variable)	$ 900	$1,500
Total savings (yours plus total match)	$2,700	$3,300

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Like your regular contributions and company fixed matching contributions, variable matching contributions will not be taxed until your money is distributed to you.

Note to Healthsource employees: If you were employed by a Healthsource company in 1997, you will not be eligible for variable matching contributions.

Your Rollover Contributions

If you worked for another employer with a qualified savings plan before joining CIGNA, you may roll over your balances from that employer's plan into the SIP Plan. If you do so, your rollover contributions will be invested in SIP investment funds, according to your elections on your rollover form. CIGNA does not match your rollover contributions.

Investing Your Plan Savings

The SIP Plan offers a wide range of professionally managed investment funds for your savings. These choices are described in detail in a separate flyer in this kit, and in the Investment Supplement of the SIP Summary Plan Description and Prospectus. You should read these materials before you make any SIP investment fund choices.

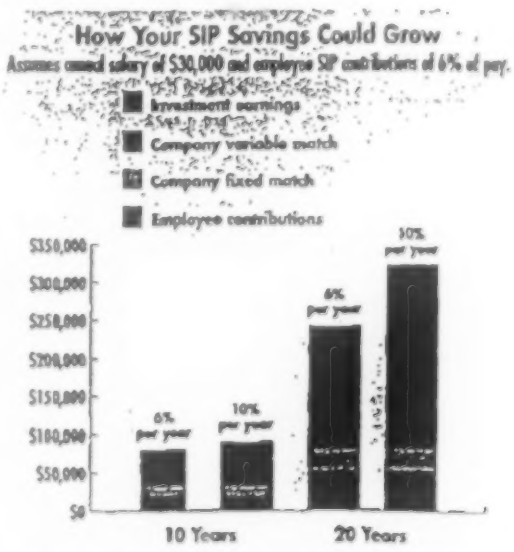
You may invest your own contributions and the company's fixed matching contributions in any of the plan's investment funds. Variable matching contributions made to your account are automatically invested in CIGNA Common Stock. You may not redirect the investment of these variable matching contributions until you retire or terminate employment with CIGNA companies.

Potential for Savings Growth

The value of your SIP account will change, depending on how much you contribute and the investments you choose.

While there are no guarantees about how quickly your savings might grow, here's an example. Suppose you earn $30,000 a year and contribute 6% of your before-tax pay to the plan. CIGNA will match 50% of the first 6% of your eligible earnings that you contribute to the plan. For purposes of this example, we will assume that CIGNA also makes a variable match of 16% (half of the maximum) of the first 6% of eligible earnings that you contribute. We will also assume that your pay increases 4% each year. The chart below shows how your savings would grow, assuming either a 6% or 10% return on your investments.

As you can see, the earnings on your account have a strong impact on your account balance. If you currently contribute to SIP, consider how investing more of your account



These figures are for illustrative purposes only and are based on the current terms of the plan. Actual returns may vary.

D00749

Vesting Schedule for Company Contributions to SIP

Years of Service	Vested %
Less than 1	0%
1	20%
2	40%
3	60%
4	80%
5 or more	100%

in stock funds—which may offer higher short-term risk, but have the potential for greater long-term returns—might help your savings grow. Also consider how contributing an extra $10 or $20 per month might boost your savings over the long term.

SIP Vesting

Vesting refers to your right to the value of your plan account—including the company contributions made on your behalf and any investment gains or losses on that money. Your vested interest in your account cannot be forfeited.

With SIP, you are *always* 100% vested in your regular contributions, rollover contributions and the investment gains or losses on this money.

You become fully vested in your company fixed and variable matching contributions (and their investment returns) at the rate of 20% for each year of vesting service you earn. You earn a year of vesting service for each calendar year during which you complete at least 1,000 hours of service for any CIGNA company. An hour of service is an hour for which you are paid by any CIGNA company.

In addition, you will be 100% vested in your entire account balance if one of the following events occurs:

- You reach age 65,
- You become totally disabled, or
- You die.

If you leave CIGNA before becoming fully vested in your account balance, you will forfeit the nonvested portion of this balance.

Changing Your SIP Elections

Most SIP elections can be made over the telephone. You may call CIGNA's AnswerLine® at 1.800.253.2287 to:

- *Change your contribution percentage.* You may increase or decrease the amount you contribute to SIP at any time. You may also stop or resume your contributions at any time. Changes to your contributions will be effective the first pay period after you call.
- *Change your investment elections for future contributions.* You may change your investment elections for new contributions going into your account at any time.
- *Transfer your existing investments among SIP funds.* You may transfer your existing investments among any of the plan's funds on any business day.

D00750

If you cannot access CIGNA's AnswerLine® and wish to make a contribution or investment change, you may complete and submit a SIP Enrollment/Change form. To request a form, call Signature Benefits Services at Network 761.3539 or 1.800.551.3539 and select the option to speak with a SIP representative.

To change your beneficiary, you must complete a new beneficiary designation form and return it to Signature Benefits Services. If you are married and wish to name someone other than your spouse as your beneficiary, you will need your spouse's written, notarized consent.

Receiving Your Plan Account

The SIP Plan is designed so that your plan account will be distributed to you at retirement—or when you leave the company, if sooner. While you are working for CIGNA, you have access to your plan account through loans and withdrawals.

Distributions

The vested value of your SIP account is available for distribution when you:

- Retire,
- Leave the company,
- Die, or
- Become disabled.

Your account will automatically be distributed to you (or your beneficiary) in a single lump sum payment, unless you elect to receive it in monthly installments or as an annuity. If any portion of your account is invested in the CIGNA Stock Fund, you may receive that amount in the form of CIGNA Common Stock. Please refer to the SIP Summary Plan Description and Prospectus for more details about your payment options.

Loans

You may borrow money from your SIP account by taking a plan loan. To be eligible for a loan, you must have an account balance of at least $2,000. You must borrow in $100 increments.

The minimum loan amount is $1,000; the maximum is generally the lesser of:

- $50,000, reduced by the highest loan balance that you had outstanding during the one-year period ending on the day before the date of your loan; or
- 50% of your total vested SIP account balance.

You will repay the loan through after-tax payroll deductions in equal amounts for a period of up to five years. If the loan is for the purchase of a principal residence, you may have up to 10 years to repay your loan. There is no penalty for repaying the full loan balance early.

Access to Your Money

Tracking your account

Interest is charged at an annual rate equal to 2 percentage points plus the rate of 3-year or 7-year U.S. Treasury securities, depending on the time period of the loan. The principal and interest you pay are credited to your account and invested according to your current investment elections for regular contributions.

You may have only two loans outstanding at any time. If you do not make a scheduled loan payment, the balance of the loan will become due immediately.

Withdrawals

Depending on your age and financial circumstances, you may be able to withdraw money from your account while you are employed by CIGNA.

The rules governing withdrawals from SIP are complicated and are covered in detail in the SIP Summary Plan Description and Prospectus.

Quarterly Statements

You will receive a statement each quarter that shows the activity in your SIP account, including:

- Your regular contributions
- Company matching contributions credited to your account
- Rollover contributions
- Transfers among the investment funds
- Opening and closing balances for each investment fund
- Loans and withdrawals
- Loan payments

D00752

A final word . . .

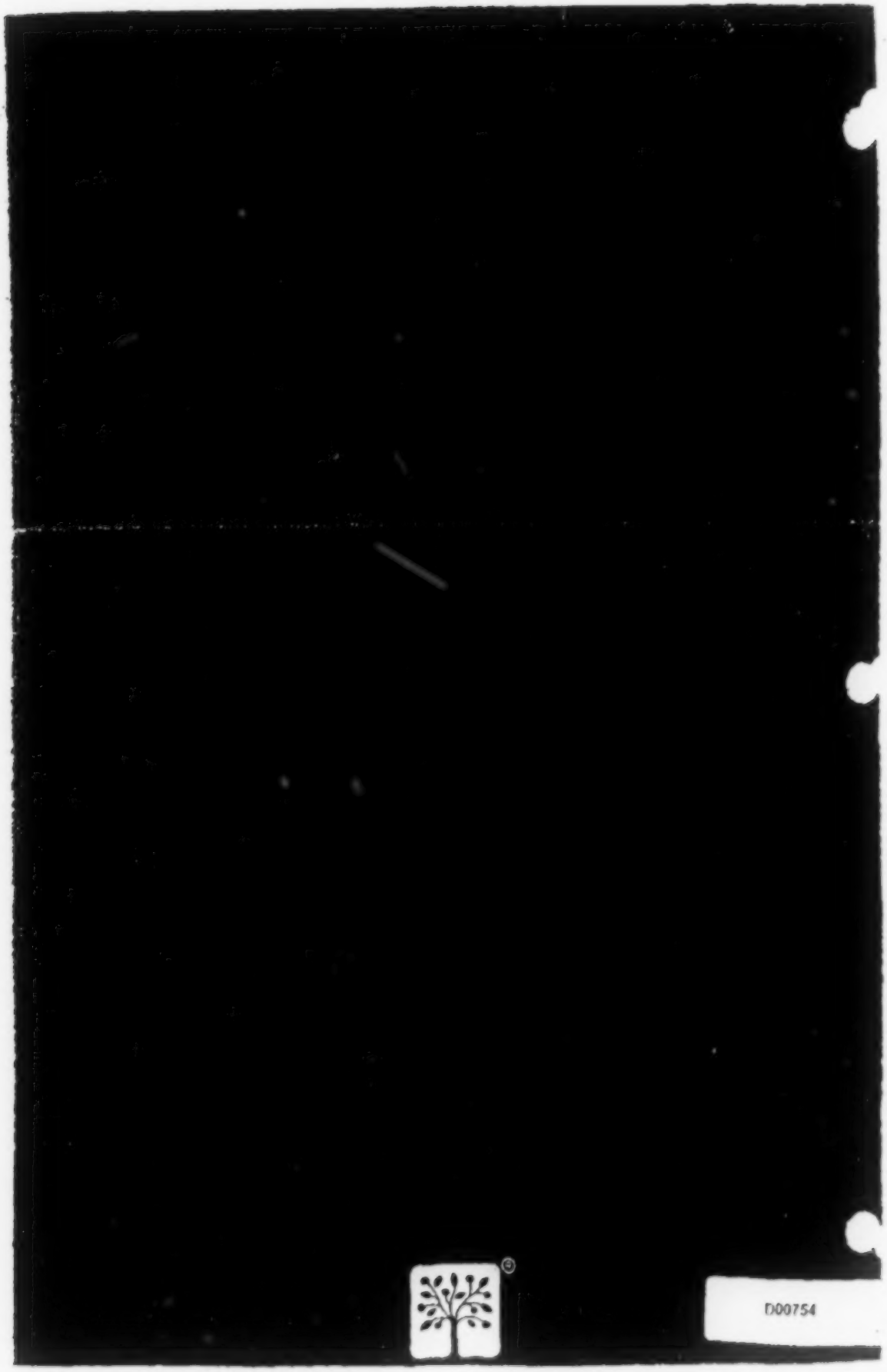
Providing you with retirement benefits that meet your personal needs is important to CIGNA. That's why your retirement program includes several ways for you to build savings that will provide you and your family with income after you retire.

As you plan your financial future, you will see the significant value of these benefits. You will also see how important your participation is if you are to get the full value of your benefits. CIGNA shares responsibility for your future financial security with you through contributions to both the Retirement Plan and SIP. You get the full advantage of CIGNA's fixed and variable matching contribution to SIP, however, only if you save at least 6% of your own earnings through SIP.

We hope you'll take time to become familiar with the plans. If you have questions that aren't answered by this brochure, please contact:

For Retirement Plan information:
Signature Benefits Services
1601 Chestnut Street
TLP 17F
P.O. Box 7716
Philadelphia, PA 19192-2174
Network: 761.3539; or 1.800.551.3539
E-mail address: Signature Benefits, Svcs

For SIP information:
CIGNA Companies
SIP Plan Management-H6A
280 Trumbull Street
P.O. Box 2975
Hartford, CT 06104-2975
CIGNA's AnswerLine® 1.800.253.2287



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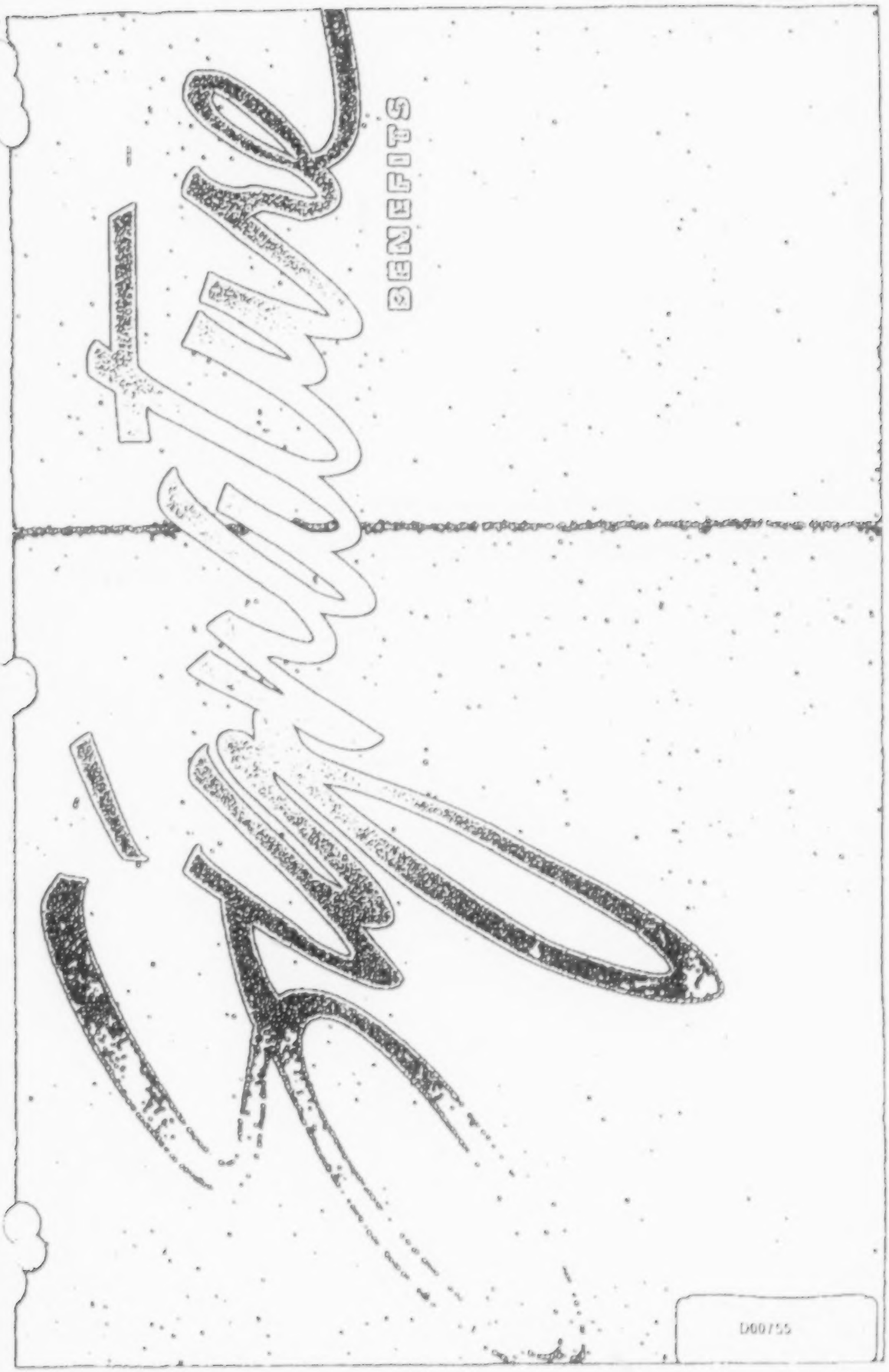

BENEFITS
D00755

A perspective on growth . . .

Fund Performance: A Five-year Look

The graphs at right show how funds in the Savings and Investment Plus (SIP) Plan performed for the five-year period from October 1, 1992, to September 30, 1997. Each of the ten funds is represented by two graphs, as follows:

Bar graph. This graph shows the quarterly gains and losses of the fund during the period. Each bar represents one quarter's gain or loss.

Line graph. This graph shows how $100 would have grown had it been invested in the fund at the beginning of the period. The growth is the cumulative result of the quarterly gains and losses shown in the bar graph. The line labeled *Inflation* allows you to compare the fund's growth rate with the inflation rate for the period.

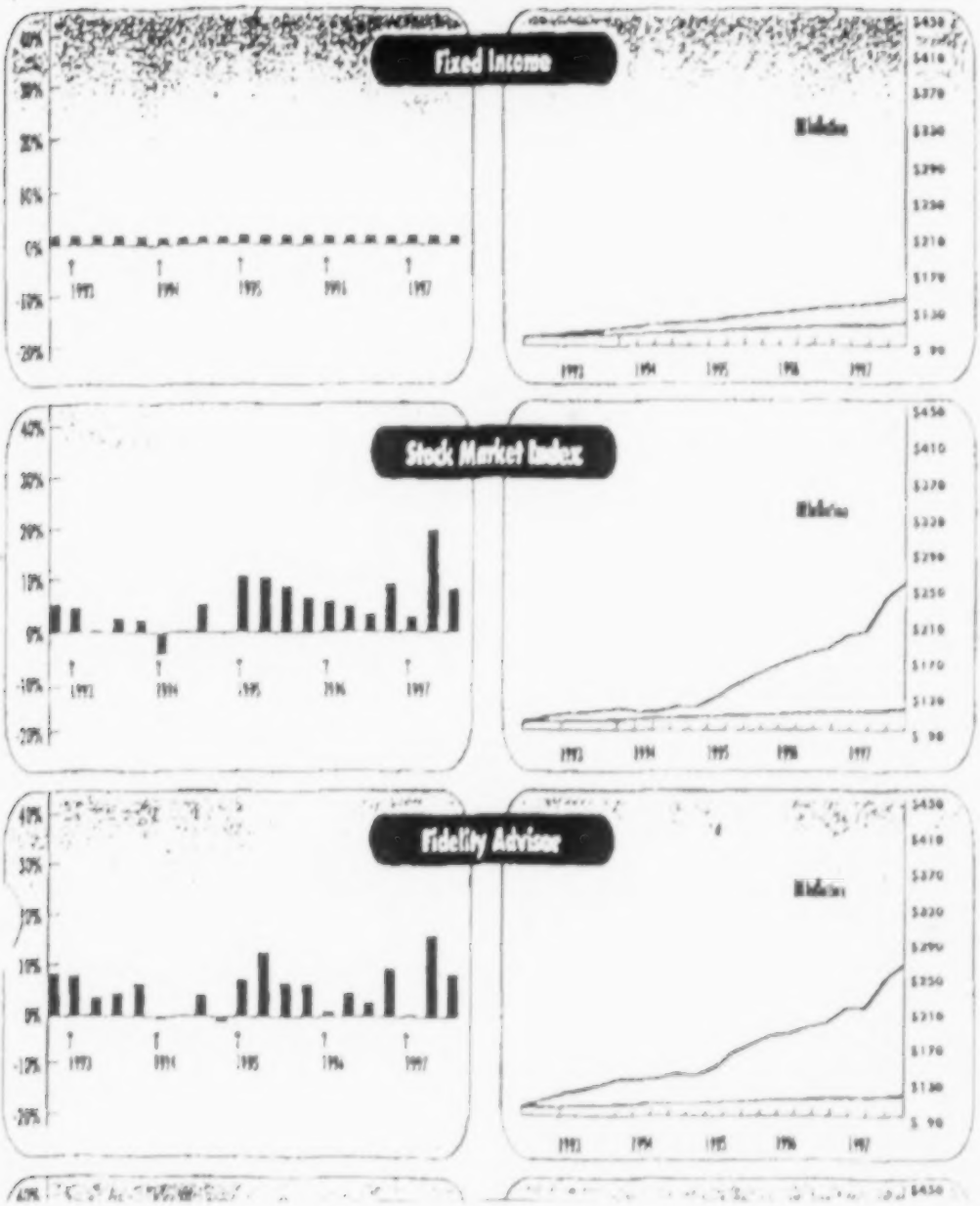
As you review the graphs, please note that some funds show large fluctuations in performance from quarter to quarter, while the performance of other funds is less variable. Generally speaking, the most variable funds also tend to be the funds with the greatest long-term growth potential.

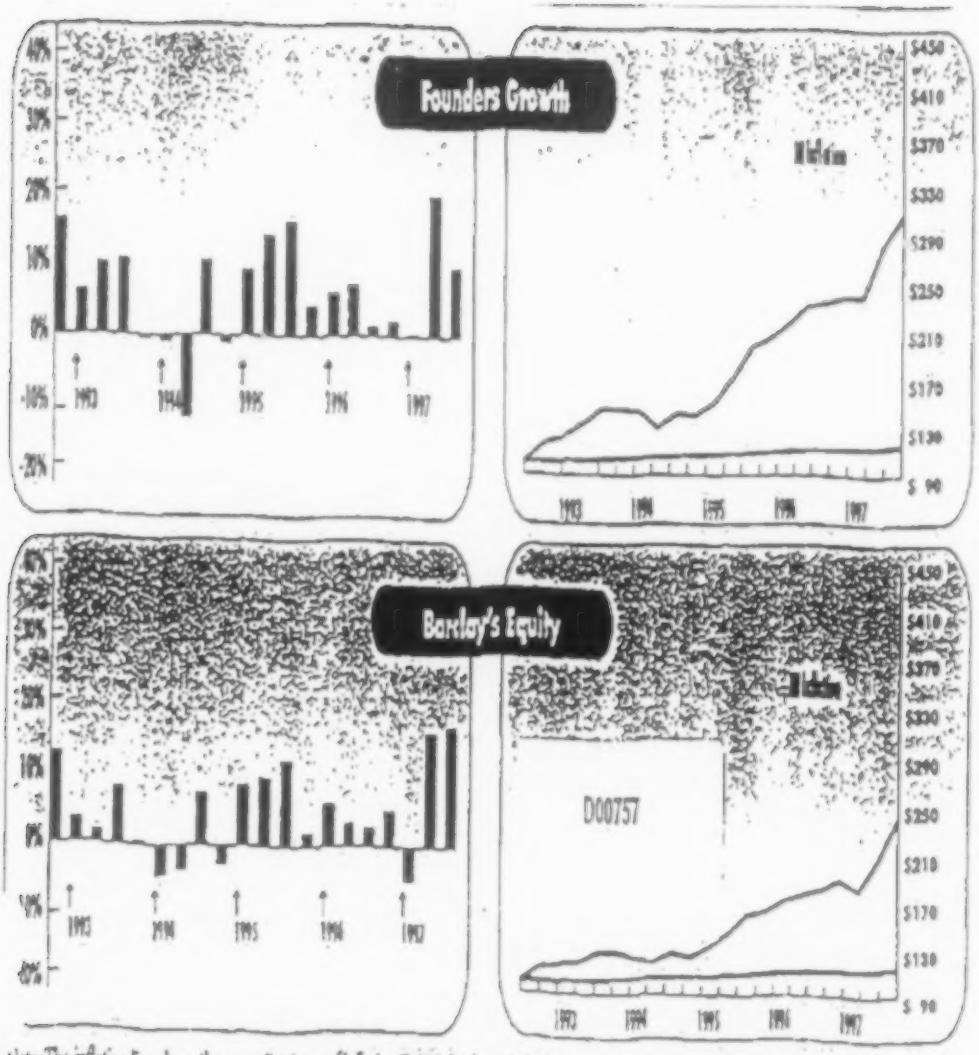
A key to successful investing is achieving the right balance between short-term variability and long-term growth potential. To achieve this balance, you may want to take advantage of the following two techniques:

Diversify your investments. To balance your risk, choose several funds rather than just one or two, since some of your funds may do well when others are doing poorly. Diversification generally works best if you choose several types of funds—for instance, large-company stock, small-company stock and foreign stock funds. By choosing a variety of fund types, you decrease the chances that your different investments will all perform alike.

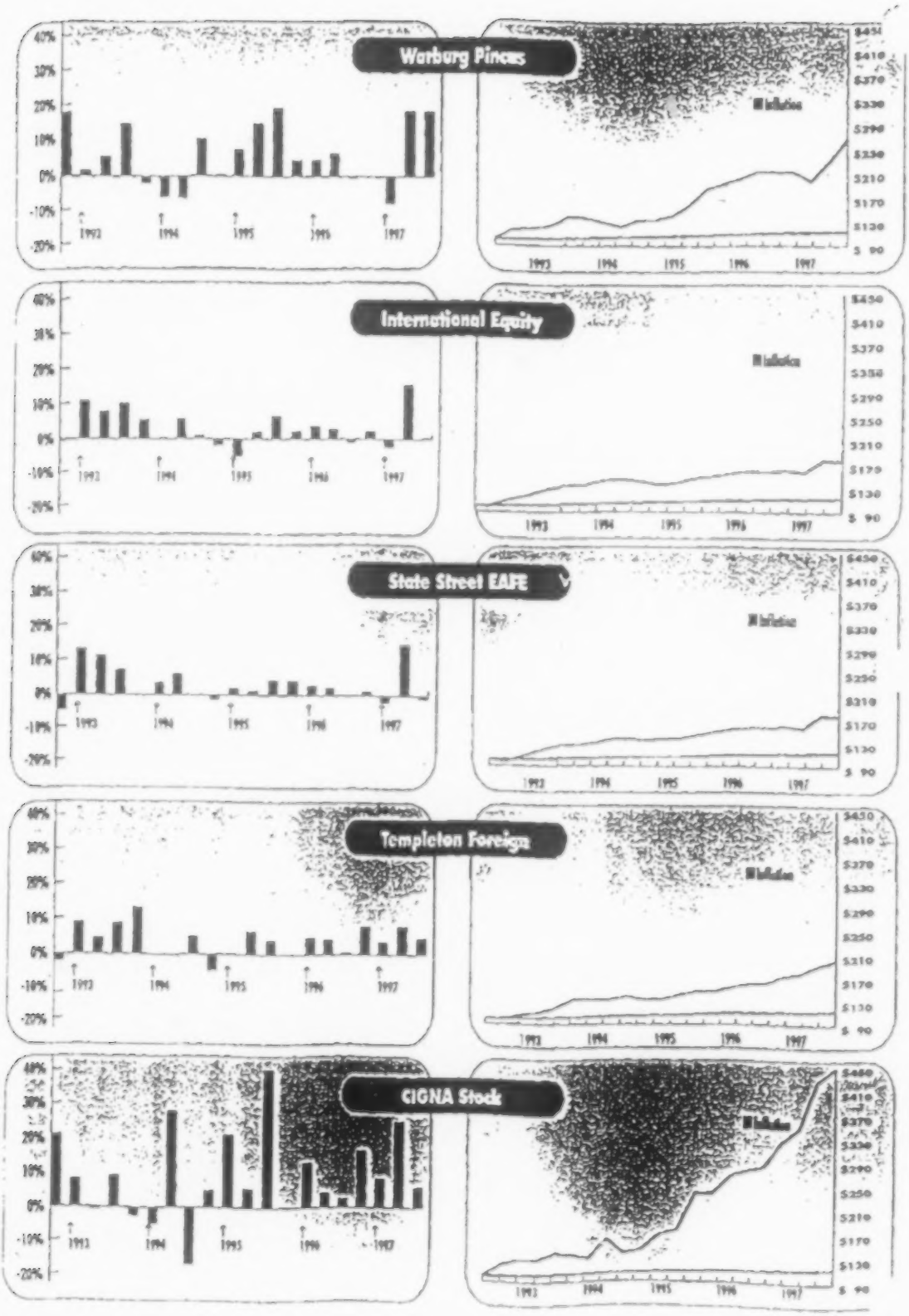
Match your investments to your "time horizon." Generally, the more time you have to invest, the more money you may want to put in variable investment funds. Over long periods of time, the gains of variable funds tend to outweigh the losses. Over shorter periods, the losses may outweigh the gains. Because of this, many investors will initially put a large percentage of their money into variable funds with high growth potential, and then gradually transfer their savings into less variable funds as the time to use their money nears.

Fund Performance from October 1, 1992, to September 30, 1997





Note: The inflation line shows the annualized rate of inflation (2.7%) for the period. Please remember that the results shown in these graphs and the tables on the following pages represent past performance and do not necessarily predict the future performance of the fund. For further information on the SIP funds, please consult the SIP Summary Plan Description and Prospectus in Section I of your Signature Benefits binder.


Warburg Pincus
International Equity
State Street EAFE
Templeton Foreign
CIGNA Stock
Inflation

Returns over time

Performance as of September 30, 199

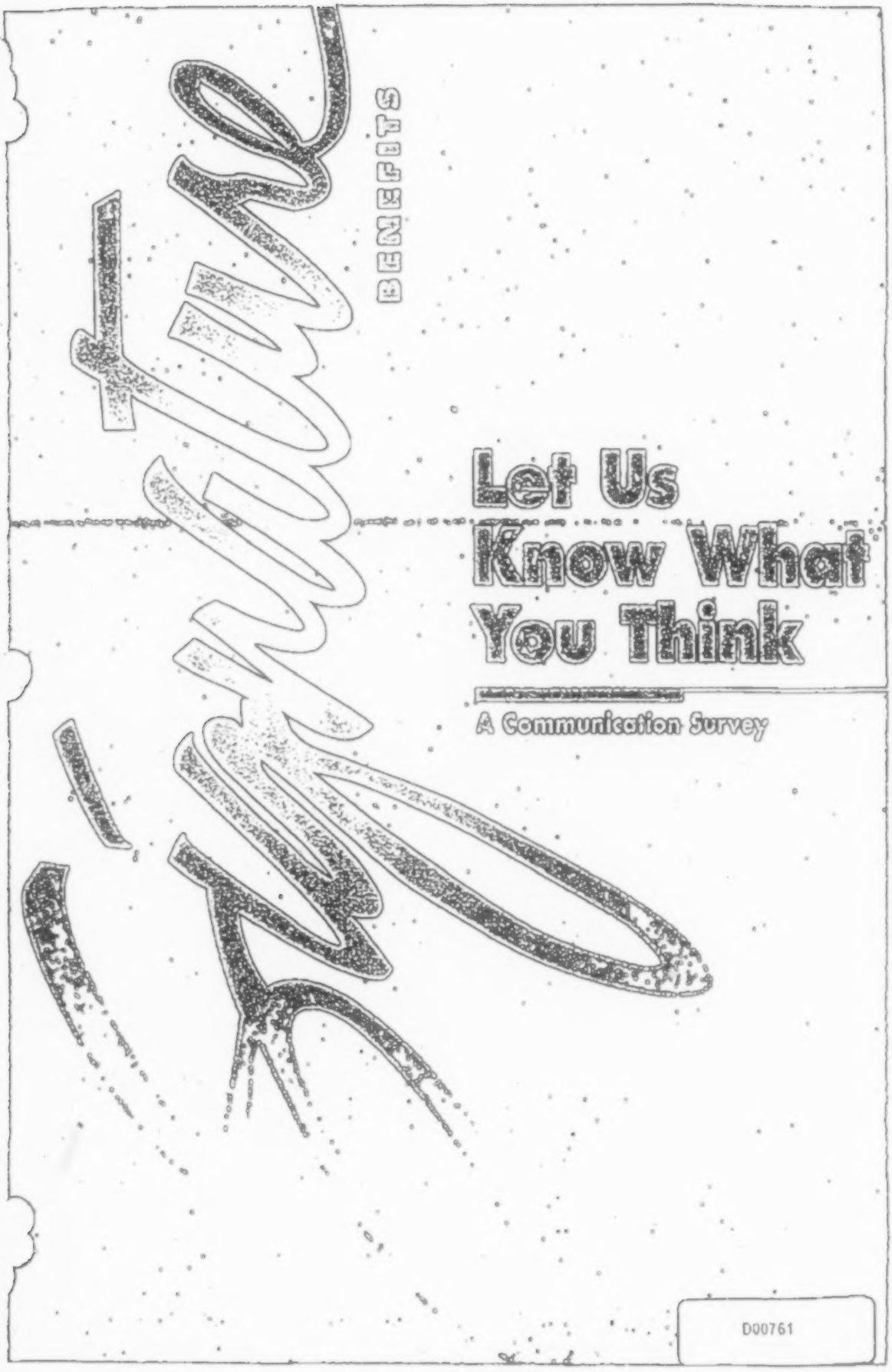
Fund Type	Fund
Large Company	Stock Market Index Fund
	Fidelity Advisor Growth Opportunities Fund
	Founders Growth Fund
International	International Equity Fund
	State Street EAFE Index Fund
	Templeton Foreign Fund

*Annualized return is calculated by converting the fund's growth rate for th entire period into an equivalent annual rate.

D00759

[redacted]

Key Features	Annualized Return* Prior 12 months	Prior 36 months	Prior 60 months
Seeks safety of principal and stable rates of return by investing in a group fixed-annuity contract. This contract provides a fixed rate of return (announced in advance) and a guarantee against loss of principal and accumulated earnings [redacted]	6.8%	[redacted]	[redacted]
Seeks to generate a total return that closely approximates that of the Standard & Poor's 500 Index (S&P 500) by investing in most of the stocks that make up this index.	40.1%	29.6%	20.5%
Seeks to provide capital growth by investing primarily in stocks of U.S. companies believed to have above-average long-term growth potential.	34.7%	24.3%	21.3%
Seeks long-term growth of capital by investing primarily in stocks of well-established, high-quality U.S. companies.	31.5%	29.4%	24.9%
[redacted] companies [redacted] Seeks maximum capital appreciation by investing in stocks [redacted]	[redacted]	[redacted]	[redacted]
Seeks superior returns with reasonable levels of risk by investing in stocks of a diversified group of European, Australian and Asian companies.	14.1%	7.6%	12.3%
Attempts to mirror the total return of the Morgan Stanley Capital International EAFE Index, by investing primarily in stocks of European, Australian and Far Eastern companies that are included in that index.	11.5%	8.5%	11.9%
Seeks long-term capital growth through a flexible policy of investing in stocks and debt obligations of foreign companies and governments.	24.3%	13.0%	15.0%
Invests only in CIGNA Corporation common stock, thereby allowing employees to share in CIGNA's success.	[redacted]	[redacted]	[redacted]


BENEFITS
Let Us
Know What
You Think
A Communication Survey
D00761

Let Us Know What You Think!

Over the last month or so, you have received a number of communications from CIGNA on changes to the retirement program. The changes include:

- A new CIGNA Retirement Plan for most employees;
- A new variable match in SIP (Savings and Investment Plus); and
- Additional investment funds in SIP.

We ask you now to take a few minutes to let us know what you think about these changes and the communications you received. Your feedback is important in helping us to improve future communications about your retirement benefits.

Please indicate your level of agreement or disagreement with each of the following statements by circling the appropriate number for each item.

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	Don't Know
1. I thoroughly read the retirement communications I received.	1	2	3	4	5	6
2. Communications about the retirement program were written clearly.	1	2	3	4	5	6
3. I have the information I need to understand CIGNA's retirement benefits.	1	2	3	4	5	6
4. The company seems committed to giving me comprehensive information about my retirement benefits.	1	2	3	4	5	6
5. On the whole, I feel good about the retirement program changes.	1	2	3	4	5	6
6. I believe my retirement benefits at CIGNA will be the same or better after the changes.	1	2	3	4	5	6
7. I believe CIGNA's retirement program (including SIP, the Retirement or Pension Plan and Social Security) will give me sufficient retirement income by age 65.	1	2	3	4	5	6
8. It has been easy to get answers to my questions about retirement benefit changes.	1	2	3	4	5	6
9. The retirement communications have encouraged me to review the adequacy of my:						
a. Personal savings level in SIP	1	2	3	4	5	6
b. Investment choice in SIP	1	2	3	4	5	6
c. Total retirement income	1	2	3	4	5	6

Please indicate how well you understand each of the following provisions of your retirement benefits by circling the appropriate number for each item.

	Very Well	Well	Somewhat	Poorly	Very Poorly	Not at All
In SIP						
10. Fixed company match	1	2	3	4	5	6
11. New variable match	1	2	3	4	5	6
12. Investment choices	1	2	3	4	5	6
In the New Retirement Plan						
13. Opening account balance (based on accrued pension benefit)	1	2	3	4	5	6
14. Benefit credits	1	2	3	4	5	6
15. Interest credits	1	2	3	4	5	6
16. Lump sum option	1	2	3	4	5	6
In the current Pension Plan						
17. Pension benefit formula	1	2	3	4	5	6
18. Early retirement benefits	1	2	3	4	5	6
19. Payment options	1	2	3	4	5	6

20. What additional information would you like CIGNA to provide about your retirement benefits?

For this background information, please circle the one letter that best answers each question.

21. **Which retirement plan will you participate in as of January 1, 1998?**
    a. The new CIGNA Retirement Plan
    b. The current Pension Plan
    c. Don't know

22. **How much do you currently contribute to SIP?**
    a. Nothing
    b. 1% to 5% of pay
    c. 6% of pay
    d. 7% of pay or more
    e. Don't remember

23. **How old are you?**
    a. 55 or older
    b. 45 to 54
    c. 35 to 44
    d. 34 or younger

24. **How long have you worked for CIGNA?**
    a. 30 years or more
    b. 16 to 29 years
    c. 5 to 15 years
    d. Less than 5 years

25. **In which CIGNA location do you work?**
    a. Philadelphia Metropolitan area
    b. Connecticut
    c. Other CIGNA office

CIGNA

Thank you for completing this communication survey. Please fold it and return it, through interoffice mail, to CIGNA Benefits Communications by January 12, 1998.

CIGNA Benefits Communications
TL17A

D00764

Beneficiary Designation Form

CIGNA RETIREMENT PLAN

Refer to the back side of this form for instructions.

Signature

1. PERSONAL INFORMATION

Name: _____
Last *First* *MI*

Address: _____
Street *City* *State* *ZIP*

Soc. Sec. Number: __ __ __/__ __/__ __ __ __ Office Location Routing Code: _____

I certify that I am: ☐ Married/separated ☐ Single/divorced ☐ Married, but my spouse cannot be located
(Please explain on the back of this form.)

2. BENEFICIARY DESIGNATION

In the event of my death, I hereby make the following beneficiary designation(s). (If you are married, your spouse is your primary beneficiary unless he or she consents to an alternate beneficiary below.) Those designated are to receive all proceeds to which I am entitled under the CIGNA Retirement Plan.

PRIMARY BENEFICIARY (If you are married, your spouse must approve any alternate beneficiary by completing Section 4 below.)

Name | Relationship | Soc. Sec. Number | Date of Birth

Address

CONTINGENT BENEFICIARY (receives proceeds if your primary beneficiary predeceases you)

Name | Relationship | Soc. Sec. Number | Date of Birth

Address

3. EMPLOYEE SIGNATURE

I understand this form revokes any and all prior beneficiary designations. I further understand that the designation in this form will be revoked if I become married or my spouse is located, and that my spouse will become my designated beneficiary.

Signature: _____ Date: __/__/__

4. SPOUSAL CONSENT FOR ALTERNATE BENEFICIARY DESIGNATION

I understand that I am the beneficiary of my spouse under the CIGNA Retirement Plan in the event of my spouse's death. I hereby waive this right and consent to _____ as the primary beneficiary designation by my spouse.
(primary beneficiary as shown above)

Spouse Signature _____ Date: __/__/__

State of _____ County of _____

I, _____, a notary public for said county and state, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the _____ day of _____, 19__

_____
Notary Public Signature

My Commission Expires _____, 19__.

CIGNA

Signature

CIGNA RETIREMENT PLAN

INSTRUCTIONS

1. Complete the appropriate sections on the front of this form. Please print clearly.

2. Under provisions of the Retirement Plan, if you are married and designate someone other than your spouse as your beneficiary, your designation will not be effective and your spouse will be considered your primary beneficiary unless:
   a) Your spouse consents to the designation of an alternate beneficiary in writing, witnessed by a notary public, or
   b) You establish to the satisfaction of the Plan Sponsor that your spouse cannot be located.

3. If you wish, you may name a contingent beneficiary. This is the person who would receive the proceeds to which you are entitled under the CIGNA Retirement Plan if your primary (or alternate) beneficiary predeceases you.

4. When naming a beneficiary(ies), include the full name (first, middle initial and last). If any beneficiary predeceases you, the life proceeds shall be payable equally to the remaining named (contingent) beneficiary(ies). If no beneficiary survives you, any sum becoming payable under said group contract(s) by reason of your death will be payable as prescribed in the group contract(s).

5. If the beneficiary is a minor under age 18, include the minor's date of birth. A letter of guardianship for the minor's estate will be required in order to process the death benefit.

6. If you wish to name a trust as beneficiary, list the name of the trust, the trustee's name and address, and the date of the trust. Payment to and receipt by the trustee shall fully discharge all liability of the insurance company.

7. If your spouse is waiving his or her right to benefits, your spouse's signature must be witnessed by a notary public.

8. If you are married but your spouse cannot be located, please explain here:

   _____

   _____

   _____

9. Sign and date the form.

10. Return this form to:

CIGNA Retirement & Investment Services
Retirement Service Center, H-18A
P.O. Box 2975
Hartford, CT 06104

D00766

12/97

CIGNA

Signature
BENEFITS NEWSLETTER
SPECIAL EDITION
November, 1997

Introducing Your New Retirement Program

On January 1, 1998, CIGNA will introduce a new retirement program. The program includes the new *CIGNA Retirement Plan*, which replaces the current CIGNA Pension Plan for most employees, plus an enhanced version of Savings and Investment Plus (SIP), our 401(k) plan. Most CIGNA employees will participate in the new CIGNA Retirement Plan, although some long-service employees will remain in the current Pension Plan. All employees will have the opportunity to participate in the enhanced SIP Plan.

If you are one of the employees staying in the current Pension Plan, we have sent you a letter. If you are moving to the new Retirement Plan, you will continue to earn benefits under the Pension Plan through December 31, 1997, and then transfer to the CIGNA Retirement Plan beginning in 1998.

The new CIGNA Retirement Plan is similar to the current Pension Plan in providing you with a secure, company-funded retirement benefit. Like the Savings and Investment Plus (SIP) Plan, the new plan gives you an account balance that grows through ongoing company credits. When you retire or leave CIGNA, you can take your plan account balance with you. (See the following article for more details about the new plan.)

The improved SIP Plan works much like the current plan, but includes a new variable company matching contribution. This new match will be in addition to the current fixed 50% match and will vary with corporate performance. All employees who contribute to SIP will be eligible for the new match, regardless of whether they participate in the new Retirement Plan or the current Pension Plan. As announced recently, CIGNA is also adding three new funds to expand your SIP investment options.

The remainder of this newsletter provides a general overview of the retirement program changes. More detailed information on the plans will be coming to you in early December, when you will receive a comprehensive Retirement Program Information Kit. (See back page.) This kit should answer most of your questions about your retirement program, so keep an eye out for it. More information on SIP is also included in your SIP Summary Plan Description and Prospectus.

A Message From CEO Bill Taylor

I am pleased to announce that on January 1, 1998, CIGNA will significantly enhance its retirement program. The changes include a new, simplified retirement plan for most employees, plus a new variable SIP match that rewards employees when corporate performance is strong.

These enhancements will make our retirement program highly competitive with those offered by other companies in our industry, helping us to attract and retain the top talent we need going forward.

Just as important, the changes will strengthen the partnership between the company and employees. While the new Retirement Plan continues to provide a secure, company-funded benefit, the improved SIP plan gives employees an even greater opportunity to share in the company's success. Together, these plans help provide a solid foundation for your future.

The remainder of this newsletter provides more information on the coming changes. Please read it carefully. Your retirement benefits are an important part of your total compensation at CIGNA. The better you understand them, the more value you can gain from them.

Bill

Note: "CIGNA" refers to CIGNA Corporation and/or any of its subsidiaries, which employ most CIGNA employees. The retirement program changes described in this newsletter do not apply to Healthsource employees.

Signature Benefits Newsletter is produced by CIGNA Benefits Communications.
Interoffice Mail: TL17A

Telephone: Network 761.3130 or 215.761.3130
Fax: Network 761.5524 or 215.761.5524

D00607

The New Retirement Plan—A Closer Look

The new CIGNA Retirement Plan is designed to be as easy to understand as the popular SIP Plan. In fact, the new plan resembles SIP in providing you with benefits through a growing account balance. As in the current Pension Plan, however, all contributions and investment decisions are made by the company, so there is no cost or investment risk to you. The new Retirement Plan provides the same benefit security as the current Pension Plan, but works better with SIP as part of a coordinated retirement program.

The new CIGNA Retirement Plan is an *account balance plan*—a type of retirement plan that is becoming increasingly popular as a simpler alternative to traditional pension plans. Here's how the new plan will work.

- If you are transferring from the current Pension Plan to the new plan, an account will be set up for you in January.
- If you earned a benefit under the current Pension Plan, the lump sum value of that benefit as of December 31, 1997, will be transferred to your account as your opening balance.
- Beginning in January, your Retirement Plan account will grow through two types of credits:
  - **Benefit credits.** CIGNA will make a benefit credit to your account for each year in which you work at least 1,000 hours for the company. These credits will range from 3% to 8.5% of your eligible annual earnings, depending on your age, service and earnings.
  - **Interest credits.** CIGNA will also credit your account with interest each quarter until you receive your benefit from the plan. The annual interest rate will vary from 4.5% to 9%, depending on recent yields of 5-year Treasury Bonds. This interest rate is consistent with guidelines set by the IRS for account balance retirement plans.
- As with the current Pension Plan, you will vest in your new Retirement Plan benefit after five years of service. Any vesting service that you have already earned under the current plan will count toward the vesting requirements of the new plan. As in the past, you must be vested to receive a benefit.
- When you retire or leave CIGNA, you will have the option to receive your vested account balance in one of two ways. You may choose an annuity (monthly payments for life), or you may take your account balance as a single lump sum payment. The lump sum option is new and resembles the SIP payment option. If you prefer, you may roll over your lump sum payment into an individual retirement account (IRA) or your new employer's qualified retirement plan. This provision allows you to assume investment control over your benefit—and defer income taxes on it—until you are ready to use it. You will also have the option to leave your account balance in the Retirement Plan, where it will continue to earn interest credits until you elect to receive your benefit. ◆

Some Employees Will Remain In the Current Pension Plan

Employees who were hired prior to 1989, who do not work for a healthplan company in the CIGNA HealthCare Division, and whose age and service total at least 45 years, will stay in the current Pension Plan rather than transfer to the new CIGNA Retirement Plan.

These long-service employees are about to enter the period of their career when the current plan provides most of its benefits. Moving these employees from the current plan to the new plan at this time could significantly reduce the future value of their benefits. To prevent this from happening, they will remain in the current Pension Plan.

There are no changes to the current Pension Plan for employees who are staying in it. The benefit formula, retirement provisions and payment options all remain the same. Employees staying in the current Pension Plan will be able to take advantage of the enhanced SIP plan, so they too will see an overall improvement in their retirement benefits.

D00608

Enhanced SIP Match Helps You Share In CIGNA's Success

The CIGNA retirement program is a partnership between the company and you. The company provides you with a secure, basic benefit through either the Retirement Plan or the Pension Plan. You then have the opportunity to increase your benefits by saving through SIP. If you take advantage of SIP, the company will increase its role in the partnership by matching a portion of your SIP savings with company contributions.

Beginning in January, the SIP partnership will become even stronger, as CIGNA increases your opportunity to receive matching contributions. CIGNA will continue to provide a fixed 50% match on the first 6% of your eligible earnings that you contribute to the plan. Starting in 1998, however, CIGNA may also provide a *variable* match in addition to the fixed match. This variable match could be as high as 33⅓% of the matchable portion of your savings. Between the fixed and variable match, your total match could be as high as 83⅓% of the first 6% of your pay that you contribute to the plan. For an employee saving at least 6% of eligible pay through the plan, this translates into a maximum potential company match (fixed plus variable) of 5% of eligible earnings.

The variable match will be discretionary and will be given only in years when CIGNA's corporate performance is strong. Performance targets for the variable match will be announced early in the year. After the year ends, the company will evaluate performance against targets and set the amount of the match accordingly. We expect the performance targets to allow for a match that, in the best years, could be as high as 33⅓% of the matchable portion of your savings. In less successful years, the match could be a smaller percentage or zero.

The new match will be credited to your account early in the year following the year for which it applies. For instance, if there is a variable match for 1998, it will be deposited into your account early in 1999. To receive a match for 1998, you must be employed on December 31, 1998, by a CIGNA company that participates in SIP. The amount you receive will be based on your 1998 SIP matchable contributions.

The variable match will automatically be invested in the CIGNA Common Stock Fund. This will more closely align employee and shareholder interests and will allow you to benefit from the company's future growth. The variable match will remain invested in the CIGNA Stock Fund until you retire or leave CIGNA.

The variable match will give you a new way to share in CIGNA's success and increase your overall retirement benefit. *To take advantage of the new match, however, you must participate in SIP.* You can maximize both CIGNA's fixed and variable matching contribution by saving 6% or more of your eligible pay through the plan. ♦

Note: Please refer to the Summary Plan Description and Prospectus located in Section I of your Signature Benefits binder for more information about SIP.

The SIP Variable Match—An Example

As an example of how the new variable match will work, assume that you earn $30,000 per year and save 6% of your eligible earnings through SIP. Here's how your own contributions and the fixed and variable matching contributions could add up. Remember, your variable matching contribution could be the minimum or maximum amount or any amount in between, depending on company performance.

	With Minimum 0% Variable Match	With Maximum 33⅓% Variable Match
Your savings (6% of eligible earnings)	$1,800	$1,800
Fixed 50% match	$900	$900
Variable 0%–33⅓% match	$0	$600
Total match (fixed plus variable)	$900	$1,500
Total savings (yours plus match)	$2,700	$3,300

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New Plan Meets Today's Needs

In many ways, the current Pension Plan was designed for a different era. "The Pension Plan works well for employees who stay at CIGNA for their whole career," says Jerry Meyn, vice president, Employee Benefits, "but it's not an effective recruiting tool for today's more mobile workforce."

In contrast, the new plan is designed to work well for *both* longer- and shorter-service employees. The new plan provides steadier benefit growth throughout your career. This allows you to earn a meaningful benefit from the plan even if you don't stay at CIGNA until retirement. The current plan provides slow benefit growth early in your career, then rapid growth as you near retirement.

Two Plans, One Program

The Retirement Plan and SIP are designed to work together as part of an integrated CIGNA retirement program. Both the new and old retirement plans provide a secure foundation for your benefits, while the SIP plan gives you the opportunity to seek greater growth through investment.

Together with Social Security, the CIGNA plans can provide you with enough money for a comfortable retirement if you spend your career here — or with a solid foundation to build on if you leave CIGNA before retirement.

Either way, to realize the full benefits of the CIGNA retirement program, you must contribute at least 6% of your pay to SIP and invest your savings wisely. If you don't participate in SIP, you pass up a significant part of your company-provided retirement benefit.

In addition to providing steadier benefit growth throughout your career, the new plan provides a lump sum payment option. You may transfer your benefit to an IRA or another employer's qualified plan if you leave CIGNA before retirement, and thus keep your benefit invested for continued growth after you leave. With the current plan, your benefit is frozen when you leave CIGNA and can't grow any further. The new plan also gives you the option of leaving your benefit in the plan, where it will continue to earn interest credits until you elect to receive a distribution.

There are other advantages of the new plan as well. A major one is simplicity. "In focus groups, we found that employees didn't understand the Pension Plan and had trouble incorporating it into their financial planning," says Meyn. The new plan is easier to understand and easier to use with SIP. Because SIP and the new Retirement Plan are account-based, employees can determine their total retirement benefit simply by adding their SIP and Retirement Plan balances together.

The similarity between the new plan and SIP has another advantage. Employees can now coordinate the Retirement Plan with SIP from an investment perspective. Because the Retirement Plan provides secure investment returns and is similar to the SIP Fixed Income Fund, many employees may feel comfortable investing more of their SIP contributions in other SIP mutual funds. Over time, these other funds tend to have greater growth potential than the Fixed Income Fund, so this could be beneficial for some employees.

The new plan will also benefit the company. "To compete effectively in today's markets," says Meyn, "we need to attract and retain top talent. We believe that the new plan will help us do that by improving the total compensation and benefits package we offer to employees." Focus groups have shown that employees don't value the Pension Plan highly because the plan's benefits are unclear and take a long time to grow. The new plan changes this by building benefits faster and making the value of those benefits more apparent through an account balance.

"In addition," says Meyn, "other financial service companies are beginning to adopt similar plans, so the new plan will keep CIGNA's benefits competitive with those offered by other leading companies in our industry."

One advantage the company will not get from the retirement program changes is cost savings. "We expect the total cost for retirement benefits to remain about the same in some years and increase in others," says Meyn. "The new variable SIP match helps us share our success with our employees and gives us the flexibility to increase retirement benefits when company performance is good." ◆

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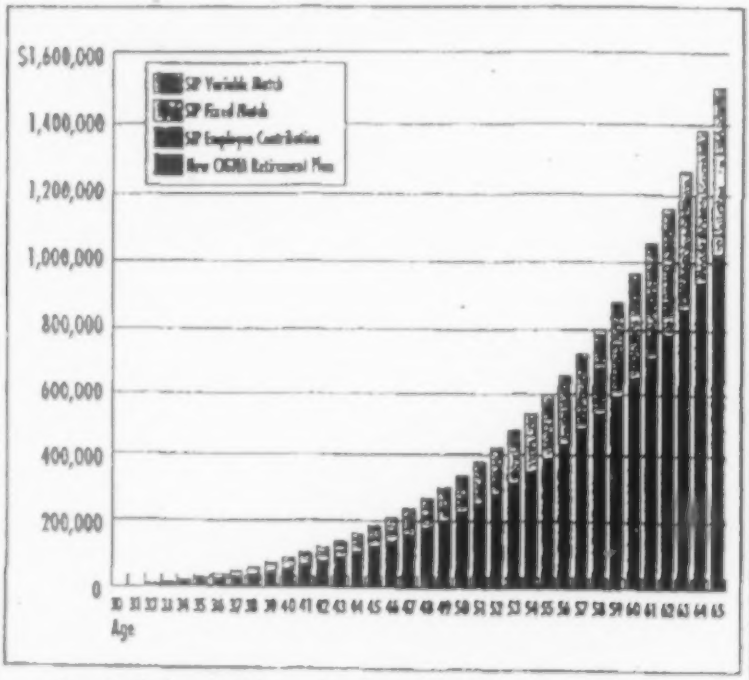
How Your Benefit Could Grow

The graph provides an example of how benefits might grow under the new retirement program (CIGNA Retirement Plan plus enhanced SIP). The example assumes the employee contributes 6% of eligible earnings to SIP, the company adds a 50% fixed match and the maximum variable match. The variable match could be any amount from zero to the full amount shown.



Assumptions: For the purpose of this example, we have made the following assumptions about the employee's history and about future plan performance:

Age when hired	30 years
Salary at age 30	$35,000
Salary at age 65 (4% annual increases)	$138,000
Employee's SIP contributions	6% of eligible pay each year
Fixed SIP match	3% of eligible pay each year
Variable SIP match	2% of eligible pay each year
SIP investment earnings	8% per year
Retirement Plan investment credits	6.5% per year

Plan benefits will vary, depending on the actual values of the variables for which assumptions have been made.

Opening Balances To Be Calculated Next Spring

Employees participating in the new CIGNA Retirement Plan will stop earning benefits under the current Pension Plan on December 31, 1997. Prior to April 1998, CIGNA will formally adopt the new CIGNA Retirement Plan, with all legally required terms and provisions. The effective date of the new plan, which will technically be an amendment to the existing plan, will be January 1, 1998.

CIGNA will begin the process of calculating final pension benefits and Retirement Plan opening balances early in 1998, after all 1997 payroll data are finalized. Benefit calculations are expected to be completed in the spring. Once balances are calculated, they will be credited to Retirement Plan accounts retroactively to January 1, 1998, so you won't lose any interest credits for the first part of 1998. You will be informed of your final Pension Plan benefit and Retirement Plan opening balance in your *Total Compensation Report*, scheduled to be mailed in May 1998. ◆

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Signature BENEFITS NEWSLETTER SPECIAL EDITION

More Information Is Coming!

This newsletter provides only an overview of the retirement program changes. During the coming weeks, you'll receive detailed information about all the plans. Here's an overview of what's coming:

When	What
December	• You'll receive an Information Kit describing your entire retirement program in detail (SIP plus either the current Pension Plan or new CIGNA Retirement Plan). • If you are in the new Retirement Plan, your kit will include beneficiary forms, which you may complete and return.
January	• CIGNA CEO Bill Taylor will announce performance goals for the 1998 SIP variable matching contribution.
February	• A special edition of the *Signature Benefits Newsletter* will be distributed, focusing on retirement planning and investment.
May	• Your *Total Compensation Report* will be mailed to your home, showing your retirement benefits as of January 1, 1998.

If you have questions, please e-mail your questions to Signature Benefits Services (e-mail address: Signature Benefits, Swss) or you may call Signature Benefits Services at Network 761.3539 or 1.800.551.3539.

INVESCO Total Return Fund Discontinued

The INVESCO Total Return Fund will be closing early in 1998. If you currently have money in this fund, we encourage you to transfer it to another investment option by February 27, 1998. Please call CIGNA's AnswerLine® at 1.800.253.2287 to change your investment instructions. ✦

New SIP Investment Funds

Beginning on January 1, 1998, you will have three new investment choices for your SIP account:

- Barclays Equity Market Index Fund
- State Street Global Advisors EAFE Index Fund
- Templeton Foreign Fund

These funds will provide options if you want to invest your SIP balance or future contributions in more aggressive investment funds. For details about these funds, please refer to the Summary Plan Description and Prospectus Investment Supplement Addendum. The Information Kit you will receive in December also contains information on all your investment choices. ✦

CIGNA

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CIGNA PENSION PLAN STATEMENT
For Period Ending December 31, 1999

This is the final 1999 statement of the benefits you earned under the Pension Plan through December 31,1999. Please keep this document with your important benefit records.

AUTO********3-DIGIT 062
ANNETTE S GLANZ
36 ASHFORD RD
ASHFORD CT 06278-9609

Your Date of Birth: 10/06/1964 Social Security #:

As of December 31,1999: Vesting Service: 12.00 years
Pension Credit Service: 11.41 years

You are fully vested in your Pension Benefit. The benefit is available after termination of employment.

	Pension Plan
1. Opening Balance as of January 1, 1999	$13,103.68
2. Benefit Credits	$2,829.39
3. Interest Credits	$671.95
4. Closing Balance as of December 31, 1999	$16,596.82

Understanding Your Statement:

1. Your 1999 new Benefit Credits were allocated at the end of each quarter based on your age + Pension Credit Service as of January 1, 1999. Benefit Credits are earned once you have completed a Year of Service (generally 1,000 hours) in 1999.

2. Interest Credits in 1999 are based on a 4.79% annualized rate. For 2000 your current Account Balance and new Benefit Credits will earn 6.22%.

-CIGNA Retirement & Investment Services reserves the right to correct any discrepancies or errors in the employee information and the right to adjust your pension calculation in the event that information furnished was incorrect or a clerical error was made.

•If you have any questions about your Statement, please contact a CIGNA Plan Specialist at 1.800.224.6624.

CIGNA PENSION PLAN STATEMENT

For Period Ending December 31, 2000

This is a statement of the benefits you earned under the Pension Plan through December 31, 2000. Please keep this document with your important benefit records.

AUTO3-DIGIT 062
ANNETTE S GLANZ
34 ASHFORD RD
ASHFORD CT 06278-9609

Your Date of Birth: 10/06/1964 Social Security #:

As of December 31, 2000:

Vesting Service: 13.00 years
Pension Credit Service: 12.41 years

You are fully vested in your Pension Benefit. The benefit is available after termination of employment.

	Pension Plan
1. Opening Balance as of January 1, 2000	$16,596.82
2. Benefit Credits	$3,874.87
3. Interest Credits	$1,120.07
4. Closing Balance as of December 31, 2000	$21,591.76

Understanding Your Statement:

1. Your 2000 new Benefit Credits were allocated at the end of each quarter based on your age + Pension Credit Service as of January 1, 2000. Benefit Credits are earned once you have completed a Year of Service (generally 1,000 hours) in 2000.

2. Interest Credits in 2000 were based on a 6.22% annualized rate.

•CIGNA Retirement & Investment Services reserves the right to correct any discrepancies or errors in the employee information and the right to adjust your pension calculation in the event that information furnished was incorrect or a clerical error was made.

•If you have any questions about your Statement, please contact a CIGNA Plan Specialist at 1.800.253.2287.

CIGNA PENSION PLAN STATEMENT
For Period Ending December 31, 2001

This is a statement of the benefits you earned under the Pension Plan through December 31, 2001. Please keep this document with your important benefit records.

••••••••••••AUTO**3-DIGIT 062
ANNETTE S GLANZ
36 ASHFORD RD
ASHFORD CT 06278-9609

Your Date of Birth: 10/06/1964 Social Security #:

As of December 31, 2001:

Vesting Service: 14.00 years
Pension Credit Service: 13.41 years

You are fully vested in your Pension Benefit. The benefit is available after termination of employment.

	Pension Plan
1. Opening Balance as of January 1, 2001	$21,591.76
2. Benefit Credits	$4,291.00
3. Interest Credits	$1,377.89
4. Closing Balance as of December 31, 2001	$27,260.65

Understanding Your Statement:

1. Your 2001 new Benefit Credits were allocated at the end of each quarter based on your age + Pension Credit Service as of January 1, 2001. Benefit Credits are earned once you have completed a Year of Service (generally 1,000 hours) in 2001.

2. Interest Credits in 2001 were based on a 5.95% annualized rate.

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*CIGNA Retirement & Investment Services reserves the right to correct any discrepancies or errors in the employee information and the right to adjust your pension calculation in the event that information furnished was incorrect or a clerical error was made.

*If you have any questions about your Statement, please contact a CIGNA Plan Specialist at 1 800 253.2287.

CIGNA PENSION PLAN STATEMENT

For Period Ending December 31, 2002

This is a statement of the benefits you earned under the Pension Plan through December 31, 2002. Please keep this document with your important benefit records.

**********AUTO**3-DIGIT 062
ANNETTE S GLANZ
36 ASHFORD RD
ASHFORD CT 06278-9609

Your Date of Birth: 10/06/1964

As of December 31, 2002:

Vesting Service: 15.00 years
Pension Credit Service: 14.42 years

You are fully vested in your Pension Benefit. The benefit is available after termination of employment.

	Pension Plan
1. Opening Balance as of January 1, 2002	$27,260.65
2. Benefit Credits	$4,587.51
3. Interest Credits	$1,300.74
4. Closing Balance as of December 31, 2002	$33,148.90

Understanding Your Statement:

1. Your 2002 new Benefit Credits were allocated at the end of each quarter based on your age + Pension Credit Service as of January 1, 2002. Benefit Credits are earned once you have completed a Year of Service (generally 1,000 hours) in 2002.

2. Interest Credits in 2002 were based on a 4.50% annualized rate.

•CIGNA Retirement & Investment Services reserves the right to correct any discrepancies or errors in the employee information and the right to adjust your pension calculation in the event that information furnished was incorrect or a clerical error was made.

•If you have any questions about your Statement, please contact a CIGNA Plan Specialist at 1.800.253.2287.

CIGNA PENSION PLAN STATEMENT

For Period Ending December 31, 2003

This is a statement of the benefits you earned under the Pension Plan through December 31, 2003. Please keep this document with your important benefit records.

I 24 6593 ••••••••••AUTO**3-DIGIT 062
ANNETTE S CLANZ
36 ASHFORD RD
ASHFORD, CT 06278-9609

Your Date of Birth: 10/06/1964

As of December 31, 2003:

Vesting Service: 16.00 years
Pension Credit Service: 15.42 years

You are fully vested in your Pension Benefit. The benefit is available after termination of employment.

	Pension Plan
1. Opening Balance as of January 1, 2003	$33,148.90
2. Benefit Credits	$4,613.30
3. Interest Credits	$1,565.44
4. Closing Balance as of December 31, 2003	$39,327.72

Understanding Your Statement:

1. Your 2003 new Benefit Credits were allocated at the end of each quarter based on your age + Pension Credit Service as of January 1, 2003. Benefit Credits are earned once you have completed a Year of Service (generally 1,000 hours) in 2003.

2. Interest Credits in 2003 were based on a 4.50% annualized rate.

•CIGNA Retirement & Investment Services reserves the right to correct any discrepancies or errors in the employee information and the right to adjust your pension calculation in the event that information furnished was incorrect or a clerical error was made.

•If you have any questions about your Statement, please contact a CIGNA Plan Specialist at 1.800.244.2782.

CIGNA PENSION PLAN STATEMENT

For Period Ending December 31, 2004

This is a statement of the benefits you earned under the Pension Plan through December 31, 2004. Please keep this document with your important benefit records.

**********AUTO**3-DIGIT 280
ANNETTE S GLANZ
104 BRIDGEPORT DR
MOORESVILLE NC 28117-9693

Your Date of Birth: 10/06/1964
Termination Date: 06/18/2004

As of December 31, 2004:

Vesting Service: 17.00 years
Pension Credit Service: 16.42 years

You are fully vested in your Pension Benefit. The benefit is available after termination of employment.

	Pension Plan
1. Opening Balance as of January 1, 2004	$39,327.72
2. Benefit Credits	$1,919.91
3. Interest Credits	$1,824.17
4. Closing Balance as of December 31, 2004	$43,071.80

Understanding Your Statement:

1. Your 2004 new Benefit Credits were allocated at the end of each quarter based on your age + Pension Credit Service as of January 1, 2004. Benefit Credits are earned once you have completed a Year of Service (generally 1,000 hours) in 2004.

2. Interest Credits in 2004 were based on a 4.50% annualized rate.

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*Prudential Retirement reserves the right to correct any discrepancies or errors in the employee information and the right to adjust your pension calculation in the event that information furnished was incorrect or a clerical error was made.

*If you have any questions about your Statement, please contact a Prudential Retirement Plan Specialist at 1.800.753.2287.

CIGNA PENSION PLAN STATEMENT
For Period Ending December 31, 1998

CIGNA

This is the final 1998 statement of the benefits you earned under the Pension Plan throug December 31,1998. Please keep this document with your important benefit records.

AUTO********3-DIGIT 062
ANNETTE S GLANZ
36 ASHFORD RD
ASHFORD, CT 06278-9609

Your Date of Birth: 10/06/1964 Social Security #:

As of December 31,1998: Vesting Service: 11.00 years
Pension Credit Service: 10.41 years

You are fully vested in your Pension Benefit. The benefit is available after termination of employment.

	Pension Plan
1. Opening Balance as of January 1, 1998	$10,005.70
2. Benefit Credits	$2,441.11
3. Interest Credits	$654.87
4. Closing Balance as of December 31, 1998	$13,101.68

Understanding Your Statement:

1. Your 1998 new Benefit Credits were allocated at the end of each quarter based on your age + Pension Credit Service as of January 1, 1998.

2. Interest Credits in 1998 were based on a 6.05% annualized rate. For 1999 your current Account Balance and new Benefit Credits will earn 4.79%.

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*CIGNA Retirement & Investment Services reserves the right to correct any discrepancies or errors in the employee information and the right to adjust your pension calculation in the event that information furnished was incorrect or a clerical error was made.

*If you have any questions about your Statement, please contact a CIGNA Plan Specialist at 1.800.224.4624.

PETITIONER'S BRIEF

Supreme Court, U.S.
FILED
AUG 27 2009
OFFICE OF THE CLERK

No. 09-804

IN THE
Supreme Court of the United States

CIGNA CORPORATION AND CIGNA PENSION PLAN,
Petitioners,
v.
JANICE C. AMARA ET AL., individually and on behalf of all others similarly situated,
Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Whether a showing of "likely harm" is sufficient to entitle participants in or beneficiaries of an ERISA plan to recover benefits based on an alleged inconsistency between the explanation of benefits in the Summary Plan Description or similar disclosure and the terms of the plan itself.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

In addition to the parties named in the caption, Gisela R. Broderick and Annette S. Glanz were plaintiffs below and are respondents in this Court.

The corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT 1

SUMMARY OF ARGUMENT 11

ARGUMENT 13

I. PLAINTIFFS CAN RECOVER BENEFITS BASED ON AN INCONSISTENCY BETWEEN AN SPD AND THE PLAN ONLY BY PROVING DETRIMENTAL RELIANCE IN A CAUSE OF ACTION UNDER ERISA § 502(a)(3) 13

A. Plaintiffs Cannot Recover Benefits Based On An Inconsistency Between An SPD And The Plan Under ERISA § 502(a)(1)(B) 14

B. In Appropriate Cases, Plaintiffs Can Recover Benefits Based On An Inconsistency Between An SPD And The Plan By Proving Detrimental Reliance Under ERISA § 502(a)(3) 20

II. EVEN IF PLAINTIFFS COULD RECOVER BENEFITS BASED ON AN INCONSISTENCY BETWEEN AN SPD AND THE PLAN UNDER ERISA § 502(a)(1)(B), A SHOWING OF DETRIMENTAL RELIANCE WOULD BE REQUIRED 24

A. ERISA's Text Supports A Detrimental-Reliance Requirement 24

B. ERISA's Common-Law Backdrop Supports A Detrimental-Reliance Requirement 26

C. ERISA's Statutory Objectives Support A Detrimental-Reliance Requirement 32

CONCLUSION 41

STATUTORY APPENDIX 1a

TABLE OF AUTHORITIES

Page(s)

CASES

Addicks Servs., Inc. v. GGP-Bridgeland, LP, 596 F.3d 286 (5th Cir. 2010) 32

Aetna Health Inc. v. Davila, 542 U.S. 200 (2004) 14, 35

Beck v. PACE Int'l Union, 551 U.S. 96 (2007) 16

Black & Decker Disability Plan v. Nord, 538 U.S. 822 (2003) 26

Branch v. G. Bernd Co., 955 F.2d 1574 (11th Cir. 1992) 26, 37

Burke v. Kodak Ret. Income Plan, 336 F.3d 103 (2d Cir. 2003), *cert. denied*, 540 U.S. 1105 (2004) 8, 9, 13, 37, 38

Burstein v. Ret. Account Plan for Emps. of Allegheny Health Educ. & Research Found., 334 F.3d 365 (3d Cir. 2003) 18, 21, 28, 31

Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc., 472 U.S. 559 (1985) 27

Chiles v. Ceridian Corp., 95 F.3d 1505 (10th Cir. 1996) 35

Conkright v. Frommert, 130 S. Ct. 1640 (2010) 32, 35

Cummings by Techmeier v. Briggs & Stratton Ret. Plan, 797 F.2d 383 (7th Cir. 1986) 33

Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73 (1995) 11, 16, 17, 19, 31

De Buono v. NYSA-ILA Med. & Clinical Servs. Fund, 520 U.S. 806 (1997) 32

DeVoll v. Burdick Painting, Inc., 35 F.3d 408 (9th Cir. 1994) 32

Dodson v. Woodmen of the World Life Ins. Soc'y, 109 F.3d 436 (8th Cir. 1997) 39

Dura Pharms., Inc. v. Broudo, 544 U.S. 336 (2005) 28

Eichorn v. AT&T Corp., 484 F.3d 644 (3d Cir. 2007) 23

Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y., 375 F.3d 168 (2d Cir. 2004) 29

Field v. Mans, 516 U.S. 59 (1995) 29, 31

Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989) 26

Govoni v. Bricklayers, Masons & Plasterers Int'l Union of Am., Local No. 5 Pension Fund, 732 F.2d 250 (1st Cir. 1984) 26

Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204 (2002) 19

Greeley v. Fairview Health Servs., 479 F.3d 612 (8th Cir. 2007) 26

Gridley v. Cleveland Pneumatic Co.,
924 F.2d 1310 (3d Cir. 1991) 11, 14, 22

Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc., 530 U.S. 238 (2000) 27

Health Cost Controls of Ill., Inc. v. Washington, 187 F.3d 703 (7th Cir. 1999) 15, 26

Heck v. Humphrey,
512 U.S. 477 (1994) 28

Heidgerd v. Olin Corp.,
906 F.2d 903 (2d Cir. 1990) 19

Hooven v. Exxon Mobil Corp.,
465 F.3d 566 (3d Cir. 2006) 11, 23

Inter-Modal Rail Emps. Ass'n v. Atchinson, Topeka & Santa Fe Ry. Co.,
520 U.S. 510 (1997) 17

Kamlet v. Hartford Life & Acc. Life Ins. Co., 144 F. App'x 755 (11th Cir. 2005) 39

Kannapien v. Quaker Oats Co.,
507 F.3d 629 (7th Cir. 2007) 21

Kennedy v. Plan Adm'r for Dupont Sav. & Inv. Plan, 129 S. Ct. 865 (2009) 3

Lemon v. Kurtzman,
411 U.S. 192 (1973) 23

Lockheed Corp. v. Spink,
517 U.S. 882 (1996) 2, 16

Lyng v. Payne,
476 U.S. 926 (1986) 23

Mass. Mut. Life Ins. Co. v. Russell,
473 U.S. 134 (1985) 3, 18

Mauser v. Raytheon Co. Pension Plan for Salaried Employees,
239 F.3d 51 (1st Cir. 2001) 22

McKnight v. So. Life & Health Ins. Co.,
758 F.2d 1566 (11th Cir. 1985) 19

Mello v. Sara Lee Corp.,
431 F.3d 440 (5th Cir. 2005) 11, 23, 33

Mertens v. Hewitt Assocs.,
508 U.S. 248 (1993) 2

Nationwide Mut. Ins. Co. v. Darden,
503 U.S. 318 (1992) 28

N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.,
514 U.S. 645 (1995) 2

Park v. Trs. of 1199 SEIU Health Care Emps. Pension Fund,
418 F. Supp. 2d 343 (S.D.N.Y. 2005) 40

Pastore v. Witco Corp. Severance Plan,
388 F. Supp. 2d 212 (S.D.N.Y. 2005) 40

Pell v. E.I. DuPont de Nemours & Co.,
539 F.3d 292 (3d Cir. 2008) 21, 22

Pension Benefit Guar. Corp. v. R.A. Gray & Co., 467 U.S. 717 (1984) 34

Pilot Life Ins. Co. v. Dedeaux,
481 U.S. 41 (1987) 2

Sereboff v. Mid Atl. Med. Servs.,
547 U.S. 356 (2006) 22

Tiara Condo. Ass'n, Inc. v. Marsh & McLennan Cos., 607 F.3d 742 (11th Cir. 2010) 29

United States v. Detroit Timber & Lumber Co., 200 U.S. 321 (1906) 15

United States v. Nestadt, 366 U.S. 696 (1961) 29

Varity Corp. v. Howe, 516 U.S. 489 (1996) 11, 16, 21, 33

Vieth v. Jubelirer, 541 U.S. 267 (2004) 38

Washington v. Murphy Oil USA, Inc., 497 F.3d 453 (5th Cir. 2007) 18, 28, 31

Weinreb v. Hosp. for Joint Diseases Orthopaedic Inst., 285 F. Supp. 2d 382 (S.D.N.Y. 2003) 40

Weinreb v. Joint Diseases Orthopaedic Inst., 404 F.3d 167 (2d Cir. 2005) 40

Wilkie v. Robbins, 551 U.S. 537 (2007) 38

STATUTES

29 U.S.C. § 1002(3) 14, 28

29 U.S.C. § 1021 16

29 U.S.C. § 1022 16

29 U.S.C. § 1022(a) 3, 12, 14, 21, 25

29 U.S.C. § 1024(b) 3, 16

29 U.S.C. § 1024(b)(2) 3, 15

29 U.S.C. § 1024(b)(4) 3

29 U.S.C. § 1029(c) 15
29 U.S.C. § 1054(h)(6)(A) 20
29 U.S.C. § 1102(a)(1) 3, 14, 15, 18
29 U.S.C. § 1102(b)(3) 17
29 U.S.C. § 1102(b)(4) 3
29 U.S.C. § 1132 6
29 U.S.C. § 1132(a)(1)(B) 3, 6, 11, 13, 18
29 U.S.C. § 1132(a)(3)(B) 6, 11, 13, 20
29 U.S.C. § 1144(a) 3

OTHER AUTHORITIES

Black's Law Dictionary (7th ed. 1999) 21
H.R. Rep. No. 93-533 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639 36
J. Pomeroy, Equity Jurisprudence (S. Symons ed. 1941) 23
Restatement (Second) of Contracts 32
Restatement (Second) of Torts 12, 29, 30
Restatement (Second) of Trusts 27, 28
Restatement (Third) of Trusts 27
Williston on Contracts (4th ed. 2001) 32

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals is unpublished but is electronically reported at 2009 WL 3199061. Pet. App. 1a. The opinions of the district court are published at 559 F. Supp. 2d 192 (Pet. App. 160a) and 534 F. Supp. 2d 288 (Pet. App. 5a).

JURISDICTION

The court of appeals filed its opinion on October 6, 2009. The petition for a writ of certiorari was filed on January 4, 2010, and granted on June 28, 2010. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, are set forth in the appendix to this brief.

STATEMENT

In 1998, CIGNA Corporation transitioned to a new form of pension plan for its employees. Although the transition complied with all of ERISA's substantive requirements, the district court found that CIGNA had failed to provide an accurate description of some aspects of the new plan in its summary plan description ("SPD")—a document that provides plan participants with a concise overview of plan benefits. Without determining whether *any* participants in the plan had actually read—let alone relied on—the SPD's descriptions of their benefits, the court ordered CIGNA to recalculate benefits for

each of the 27,000 class members. The Second Circuit summarily affirmed.

According to the courts below, plaintiffs seeking to recover benefits based on an inconsistency between an SPD and the plan itself have no obligation to demonstrate that they detrimentally relied on the SPD's description of their benefits (or even that they were aware of that description at all). That conclusion cannot be reconciled with ERISA's text, common-law origins, or statutory objectives. The decision below should be reversed.

1. ERISA does not "require[ ] employers to establish employee benefits plans" or "mandate what kind of benefits employers must provide if they choose to have such a plan." *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). It instead "encourag[es] the formation" of such plans by establishing a uniform legal framework that facilitates cost-effective plan administration (*Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987)) and that "minimize[s] the administrative and financial burden of complying with conflicting [state-law] directives." *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656 (1995) (internal quotation marks omitted).

The protections that ERISA affords plan participants reflect the "careful balanc[e]" that Congress struck between the dual statutory objectives of protecting plan participants and promoting plan formation. *Pilot Life*, 481 U.S. at 54. ERISA contains a "carefully crafted and detailed enforcement scheme" that "resolved innumerable disputes between powerful competing interests—not all in favor of potential plaintiffs." *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 254, 262 (1993). For example, ERISA authorizes a

plan participant to bring a civil action "to recover benefits due to him under the terms of his plan" (29 U.S.C. § 1132(a)(1)(B)), but does not authorize awards of extra-contractual damages. *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 144 (1985). ERISA also restricts plan participants to the remedies afforded by ERISA itself by expressly preempting all state-law claims that "relate to any employee benefit plan." 29 U.S.C. § 1144(a).

ERISA contains several disclosure provisions that are designed to ensure that participants understand their benefits and the eligibility requirements they must satisfy. ERISA requires each covered plan to be "established and maintained pursuant to a written instrument" that "specif[ies] the basis on which payments are made to and from the plan." 29 U.S.C. § 1102(a)(1), (b)(4); *Kennedy v. Plan Adm'r for Dupont Sav. & Inv. Plan*, 129 S. Ct. 865, 875 (2009). ERISA further states that plan sponsors must make the plan "available for examination by any plan participant or beneficiary" and furnish a copy of the plan to a participant or beneficiary upon request (at a "reasonable charge to cover the cost"). 29 U.S.C. § 1024(b)(2), (4).

Because plans are generally voluminous documents written in technical legal terms, ERISA also requires plan administrators to provide participants with SPDs that summarize the terms of the plan in plain English. 29 U.S.C. §§ 1022(a), 1024(b). SPDs must be "written in a manner calculated to be understood by the average plan participant," and must be "sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." *Id.* § 1022(a). ERISA further requires that a plan provide participants with a Summary of Materiai Modi-

fications ("SMM") whenever material changes are made to the plan or to the information that the plan is required to disclose in the SPD. *Id.* ERISA's "regulations regarding the content of SMMs and SPDs [are] virtually identical." Pet. App. 115a n.33.

2. CIGNA sponsors an ERISA-governed pension benefit plan for its employees. In 1998, CIGNA transitioned from a traditional defined benefit pension plan formula, known as "Part A," to a cash balance pension plan formula, known as "Part B." Pet. App. 16a-17a.

Under CIGNA's traditional defined benefit pension plan, employees earned benefits over time based on their service and salary. Pet. App. 15a. Upon retirement, they received an annuity that provided them with an annual benefit payable for life. *Id.* at 16a. Under CIGNA's cash balance pension plan, employees still earn benefits over time based on service and salary, but—instead of being expressed in the form of an annual benefit—the benefits are expressed as credits to a hypothetical "account" for each employee. *Id.* at 19a-20a. The account balances increase based on annual service and salary credits, as well as quarterly interest credits; upon retirement, employees have the option of taking their benefit as a lump sum or in the form of an annuity payable for life. *Id.* at 21a-22a.

CIGNA is one of the "hundreds of employers [that] have adopted" cash balance plans since they "were introduced in the mid-1980s." Pet. App. 11a. Like the CIGNA Plan, most of these cash balance plans are the result of lawful "conversions from traditional defined benefit plans." *Id.* at 13a. There are many factors that can lead an employer to transition to a cash balance plan. As the district court ex-

plained, "cash balance plans are not inherently more or less costly than traditional defined benefit plans," and, "depending on how the plan is configured, . . . may provide advantages for both employees and employers." *Id.* at 11a. For example, CIGNA's cash balance plan places less weight than its traditional defined benefit plan on employees' salaries at the time of retirement, which permits employees to accrue retirement benefits at a more steady rate throughout their careers. *Id.*

CIGNA transitioned from a traditional defined benefit plan to a cash balance plan by converting each plan participant's Part A accrued benefit into a lump sum and crediting that amount to each participant's individual Part B account as an opening balance. Pet. App. 19a. Participants thereafter accrue additional benefits based on annual pay credits and quarterly interest credits. *Id.* at 20a-21a. CIGNA also guarantees participants that if their Part B benefit is less valuable at the time they decide to receive their pensions than their Part A accrued benefit at the time of the transition, they will receive their more valuable Part A benefit as a "minimum benefit." *Id.* at 22a.

In December 1997, CIGNA issued an SMM that informed participants about the forthcoming transition to a cash balance plan and that "contained detailed information about the calculation of opening balances." Pet. App. 34a. In October 1998, CIGNA issued the SPD for Part B, which it reissued in nearly identical form in September 1999. *Id.* at 39a. Among other things, the SPD provided participants with information about "eligibility; how breaks in service affect eligibility; how the cash balance account grows, including how pay and interest credits accrue; when benefits are paid; [and] how benefits

are paid. . . . It also informed employees that they could obtain a copy of the Plan from the plan administrator." *Id.* at 39a-40a.

In addition to these companywide communications, CIGNA also provided each participant with a personalized Total Compensation Report in 1998, which showed the participant's actual opening account balance and the manner in which that balance was calculated. Pet. App. 38a-39a. Thereafter, CIGNA provided each participant with annual account statements showing the participant's year-end account balance and its year-to-year growth. *Id.* at 39a.

3. In 2001, respondents filed suit against CIGNA in the United States District Court for the District of Connecticut under ERISA § 502, 29 U.S.C. § 1132. On behalf of a putative class of participants in the CIGNA Pension Plan, respondents alleged that Part B of the Plan violated numerous substantive requirements of ERISA and that CIGNA had violated certain of ERISA's disclosure requirements during the transition from its traditional defined benefit pension plan to its cash balance plan. Pet. App. 7a. Respondents sought relief under both § 502(a)(1)(B), which authorizes a plaintiff to "recover benefits due to him under the terms of his plan" (*id.* § 1132(a)(1)(B)), and § 502(a)(3), which authorizes "other appropriate equitable relief . . . to redress . . . violations" of ERISA. *Id.* § 1132(a)(3)(B). The district court certified a class of approximately 27,000 plan participants. Pet. App. 41a, 47a n.9.

After a bench trial, the district court concluded that the terms of CIGNA's cash balance plan were lawful and rejected respondents' arguments that the Plan is age-discriminatory and violates ERISA's non-

forfeiture and anti-backloading rules. Pet. App. 8a. The court emphasized that "ERISA gives employers substantial leeway in designing a pension plan," and that "CIGNA's Plan complies with the relevant statutory provisions." *Id.*

The district court also determined, however, that "CIGNA's summary plan descriptions . . . were inadequate under ERISA" because "the company did not provide its employees with the information they needed to understand the conversion from a traditional defined benefit plan to a cash balance plan and its effect on their retirement benefits." Pet. App. 8a, 9a.

The district court found that the CIGNA Plan's SPDs were deficient because they failed to disclose to participants a phenomenon known as "wear away." Pet. App. 123a. "Wear away" is attributable to the interaction between the Plan's opening account balance and minimum benefit provisions. *Id.* at 24a. Specifically, although participants earn additional pay and interest credits to their Part B account balances each year they continue working, some participants might have account balances that are less valuable than their Part A minimum benefit for some period of time due to falling interest rates, mortality assumptions, or the protection of subsidized early retirement benefits previously earned under Part A. *Id.* at 22a-25a.

The district court held that this "wear away" phenomenon was not inconsistent with any of ERISA's substantive requirements. Pet. App. 8a. It nevertheless concluded that "CIGNA had a duty to inform plan participants of the possibility of wear away." *Id.* at 123a. According to the district court,

CIGNA violated this duty by failing to disclose "wear away" in its SPDs. *Id.*[1]

The district court rejected CIGNA's argument that, even if its SPDs were deficient, respondents were "not entitled to relief because they ha[d] failed to demonstrate injury" attributable to those deficiencies. Pet. App. 131a. Invoking the Second Circuit's decision in *Burke v. Kodak Retirement Income Plan*, 336 F.3d 103 (2d Cir. 2003), *cert. denied*, 540 U.S. 1105 (2004), the district court stated that recovery is appropriate where "a plan participant or beneficiary was *likely* to have been harmed as a result of a deficient SPD" and that "[w]here a participant makes this initial showing . . . the employer may rebut it through evidence that the deficient SPD was in effect a harmless error." Pet. App. 132a (quoting *Burke*, 336 F.3d at 113) (emphasis in *Burke*). Emphasizing the "broad nature of 'likely harm,'" the court found that respondents had made their threshold showing because CIGNA's SPDs "likely, and quite reasonably, led plan participants to believe that wear away was not a likely result of the transition to Part B." *Id.* at 132a, 136a (internal quotation marks omitted).

To rebut this presumption of "likely harm," CIGNA demonstrated that, "even if [respondents] had received all of the information they claim should have been included in the [SPDs], no Class member's benefits under Part B would have changed" (Pet. App. 133a) because the terms of the Plan do not af-

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[1] The district court also found that the SPDs were deficient because they purportedly led plan participants to believe that all their Part A benefits would be preserved in the opening Part B account balance or as part of their minimum benefit, when in fact early retirement benefits were not preserved under some circumstances. Pet. App. 128a-30a.

ford CIGNA's employees the authority to disapprove plan amendments. CIGNA further demonstrated that participants were provided annual personalized statements notifying them of their actual account balances, and that participants never received less than their account balances. *Id.* at 22a, 39a.

The district court nevertheless concluded that CIGNA had failed to defeat the "likely harm" presumption because it was possible that the deficiencies in the SPDs "deprived [respondents] of the opportunity to take timely action," including "protesting at the time Part B was implemented, leaving CIGNA for another employer with a more favorable pension plan, or filing a lawsuit like this one." Pet. App. 137a (internal quotation marks omitted).

The district court then ordered briefing on remedial issues. CIGNA again argued that *each* "'plan participant should be required to prove detrimental reliance before being entitled to benefits based on a flawed SPD.'" Pet. App. 165a n.1. The district court rejected CIGNA's individualized remedial approach on the ground that it was "contrary to Second Circuit precedent." *Id.* (citing *Burke*, 336 F.3d at 112). The district court thus declined to "distinguish the named Plaintiffs from the rest of the Class," or "require an individualized showing such as that requested by CIGNA, *even from the named Plaintiffs themselves*." *Id.* at 164a (emphasis added). According to the district court, "all class members were affected equally and in a similar manner" by the deficient SPDs (*id.* at 165a)—even those "employees who received *but did not read* the misleading notices and disclosures." *Id.* at 167a (emphasis added).

Applying its undifferentiated, class-wide remedial approach, the district court concluded that "the

terms of Part B ha[d] been . . . modified by CIGNA's October 1998 and September 1999 Summary Plan Descriptions," and ordered CIGNA to recalculate the class's benefits using a so-called "A+B" approach. Pet. App. 218a. Under that methodology, a participant will receive "all of her Part A benefits in the form those benefits were previously offered under Part A, plus all the benefits she accrued under Part B" (*id.* at 196a), without regard to the contrary terms of the Plan itself. The district court held that this relief was proper under § 502(a)(1)(B) of ERISA because it "constitute[s] benefits under the terms of the plan." *Id.* at 181a. The court therefore ruled that it "need not consider whether any relief . . . would also be available under § 502(a)(3)." *Id.* at 182a.[2]

"[R]ecogniz[ing] that the benefits awarded by [its] opinion are substantial, and that the law on which they are based is anything but settled," the district court *sua sponte* stayed its decision pending appeal. Pet. App. 219a.

The court of appeals summarily affirmed "for substantially the reasons stated in" the district court's opinions. Pet. App. 4a.

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[2] In crafting this relief under § 502(a)(1)(B), the district court pointed to deficiencies in both the SPDs and the SMM, but made clear that, in the absence of the deficient SPDs, it would not have held that the terms of the Plan had been "modified" to provide for an "A+B" approach. Pet. App. 218a; *see also id.* at 200a ("the Court is reluctant . . . to reform the terms of the plan in conformity with the SMM").

SUMMARY OF ARGUMENT

To recover benefits based on an inconsistency between an SPD and the terms of an ERISA plan itself, a plaintiff must prove that she detrimentally relied on the SPD. Because the Second Circuit permitted the 27,000 class members to recover benefits based on CIGNA's SPDs without requiring any of them to make a showing of detrimental reliance, the decision below should be reversed.

I. As a threshold matter, § 502(a)(1)(B) of ERISA, which authorizes a participant or beneficiary to sue to "recover benefits due . . . *under the terms of [the] plan*," does not authorize a suit to recover benefits described in an SPD but not in the plan itself. 29 U.S.C. § 1132(a)(1)(B) (emphasis added). As then-Judge Alito explained in *Gridley v. Cleveland Pneumatic Co.*, 924 F.2d 1310 (3d Cir. 1991), the plain language of § 502(a)(1)(B) permits recovery only for benefits promised in a "plan," and an SPD is not a "plan." *Id.* at 1316. Moreover, an SPD may not amend a plan unless the plan's amendment procedures so permit. *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 79 (1995).

Participants and beneficiaries, however, may be able to recover for a deficient SPD under ERISA § 502(a)(3), which authorizes "appropriate equitable relief . . . to redress . . . violations" of ERISA. 29 U.S.C. § 1132(a)(3)(B). In appropriate cases, recovery may be available under either a breach-of-fiduciary-duty theory (*Varity Corp. v. Howe*, 516 U.S. 489 (1996)) or under a theory of equitable estoppel. Both theories require the plaintiff to make a showing of detrimental reliance. *See, e.g., Hooven v. Exxon Mobil Corp.*, 465 F.3d 566, 571 (3d Cir. 2006); *Mello*

v. Sara Lee Corp., 431 F.3d 440, 444-45 (5th Cir. 2005).

II. Even if a participant or beneficiary could recover benefits based on an inconsistency between an SPD and the plan under ERISA § 502(a)(1)(B), a showing of detrimental reliance would still be required.

A. ERISA's statutory language limits recovery to plaintiffs who actually looked to the SPD to learn about their benefits. Indeed, an SPD is designed to "apprise . . . participants and beneficiaries of their rights and obligations under the plan." 29 U.S.C. § 1022(a). There is no remedy under ERISA for plaintiffs who did not detrimentally rely upon an inconsistency between an SPD and the plan because those plaintiffs did not use the SPD to "apprise" themselves of their benefits under the plan.

B. Moreover, the common-law causes of action most analogous to respondents' claims—negligent and intentional misrepresentation—included a detrimental-reliance requirement. *See* Restatement (Second) of Torts §§ 552(1), 525. And, even if respondents' suit is analogized to a contract action, respondents have effectively pleaded promissory estoppel—a gratuitous promise outside the terms of the written contract—which also requires detrimental reliance.

C. ERISA's policy objectives provide further support for the detrimental-reliance requirement. If a participant or beneficiary has suffered an injury by relying on an inconsistency between an SPD and a plan, she should be entitled to recover. But plaintiffs who never even read the flawed SPD, or who read the SPD but did not alter their conduct based on it, should not receive a windfall recovery from plan as-

sets. Any other rule would needlessly deplete the assets available to fund benefits for all other participants and beneficiaries, encourage the production of lengthy and impossible-to-decipher SPDs, and discourage companies from offering benefit plans in the first place.

The Second Circuit has never attempted to reconcile its "likely harm" standard with the text of ERISA or with the common-law actions most analogous to respondents' claims. According to the Second Circuit, that standard is required by ERISA because "individual employee[s]" are generally "less equipped to absorb the financial hardship of the employer's errors" than the plan itself. *Burke v. Kodak Ret. Income Plan*, 336 F.3d 103, 113 (2d Cir. 2003). But financial resources alone provide no reason to redistribute a plan's finite assets to a plaintiff who has never even read an SPD and to do so at the expense of other participants and beneficiaries who must look to those same limited plan assets for their retirement benefits.

ARGUMENT

I. PLAINTIFFS CAN RECOVER BENEFITS BASED ON AN INCONSISTENCY BETWEEN AN SPD AND THE PLAN ONLY BY PROVING DETRIMENTAL RELIANCE IN A CAUSE OF ACTION UNDER ERISA § 502(a)(3).

The Second Circuit erred in permitting recovery under § 502(a)(1)(B) of ERISA, which authorizes suit only "to recover benefits due . . . under the terms of [the] plan" (29 U.S.C. § 1132(a)(1)(B)) because an SPD is not itself a "plan." Relief is potentially available to respondents only under ERISA § 502(a)(3), which authorizes "appropriate equitable relief . . . to redress . . . violations" of ERISA (*id.* § 1132(a)(3)(B)),

and which would require respondents to make a showing of detrimental reliance.

A. Plaintiffs Cannot Recover Benefits Based On An Inconsistency Between An SPD And The Plan Under ERISA § 502(a)(1)(B).

1. Although respondents brought suit under both § 502(a)(1)(B) and § 502(a)(3) of ERISA, the district court awarded relief only under § 502(a)(1)(B). Pet. App. 171a-72a, 197a. This Court has recognized that § 502(a)(1)(B) "is relatively straightforward": "If a participant or beneficiary believes that benefits promised to him *under the terms of the plan* are not provided, he can bring suit seeking provision of those benefits." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 210 (2004) (emphasis added).

An SPD "is not a 'plan' within the meaning of Section 502(a)(1)(B)." *Gridley v. Cleveland Pneumatic Co.*, 924 F.2d 1310, 1316 (3d Cir. 1991) (Alito, J.). ERISA defines a "plan" as "an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan," 29 U.S.C. § 1002(3), and requires a "plan" to "be established and maintained pursuant to a written instrument." *Id.* § 1102(a)(1). Here, the "written instrument" is the document entitled "CIGNA Pension Plan." *See* J.A. 396a, 427a.

"This definition clearly does not encompass a summary plan description" (*Gridley*, 924 F.2d at 1318), which ERISA separately defines as a document that "apprise[s] . . . participants and beneficiaries of their rights and obligations *under the plan*." 29 U.S.C. § 1022(a) (emphasis added). The plan embodied in the "written instrument" is "the original, as it

were, which the summary plan description excerpts and translates into language that may be imprecise because it is designed to be intelligible to lay persons." *Health Cost Controls of Ill., Inc. v. Washington*, 187 F.3d 703, 711 (7th Cir. 1999) (Posner, J.). An SPD is no more a "plan" than a syllabus to one of this Court's opinions is itself an opinion. *See United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337 (1906).

ERISA's structure confirms this conclusion. The statute repeatedly treats an SPD as different from the "written instrument" under which "[e]very employee benefit plan shall be established and maintained." 29 U.S.C. § 1102(a)(1). Indeed, a number of provisions of ERISA would be nonsensical if an SPD were understood to be a document that is part of the "plan." *See, e.g.*, 29 U.S.C. § 1024(b)(2) ("The administrator shall make copies of the latest updated summary plan description . . . *and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated* available for examination by any plan participant or beneficiary . . . .") (emphasis added); *id.* § 1029(c) ("The Secretary may prescribe the format and content of the summary plan description . . . and any other report, statements or documents (*other than the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated*) which are required to be furnished or made available to plan participants and beneficiaries receiving benefits under the plan.") (emphasis added).

Moreover, ERISA assigns the responsibility for drafting and amending the plan and SPD to *different* entities. Creating and modifying the plan is the responsibility of the settlor (that is, the employer). *See*

Beck v. PACE Int'l Union, 551 U.S. 96, 101 (2007) ("[A]n employer's decision whether to terminate an ERISA plan is a settlor function immune from ERISA's fiduciary obligations.") (emphasis omitted); *Lockheed Corp. v. Spink*, 517 U.S. 882, 890 (1996) ("Plan sponsors who alter the terms of a plan do not fall into the category of fiduciaries."). In contrast, publishing an SPD is a fiduciary function for which the plan administrator has exclusive responsibility. *See* 29 U.S.C. §§ 1021, 1022, 1024(b); *Varity Corp. v. Howe*, 516 U.S. 489, 502 (1996) ("ERISA itself specifically requires administrators to give beneficiaries certain information about the plan."). Although an employer sometimes acts as both the plan sponsor and the plan administrator, the "employer's fiduciary duties under ERISA are implicated only when it acts in the latter capacity." *Beck*, 551 U.S. at 101.[3] The fundamental statutory distinction between plan composition and SPD production underscores that an action to recover benefits based on an SPD does not constitute an action for benefits under the "plan" within the meaning of § 502(a)(1)(B).

Nor may an SPD modify the terms of a plan, unless the plan's amendment procedures so provide. In *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995), this Court unanimously held that an amendment to a plan is effective only if the amendment procedures specified in the plan are met. *Id.* at 79. In that case, the plan provided that only "the

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[3] The district court in this case determined that an individual not a party to the lawsuit was the specifically named "administrator" for the CIGNA Plan. Pet. App. 84a. The district court further found (over CIGNA's objection, *see id.* at 83a-89a) that CIGNA also was a "*de facto* administrator or co-administrator." *Id.* at 87a.

Company" could adopt amendments, and the SPD had been drafted by two employees who did not necessarily have authority to act on behalf of the company. *See id.* The Court held that the amendment procedure was valid and that, accordingly, "one must look *only* to '[t]he Company' and *not* to any other person" to determine if a valid amendment had been adopted. *Id.* The case was remanded to determine whether the employees' issuance of the SPD qualified as an amendment "by the Company" within the meaning of the plan. *Id.* at 85; *see also* 29 U.S.C. § 1102(b)(3) (requiring that every plan "provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan"); *Inter-Modal Rail Emps. Ass'n v. Atchinson, Topeka & Santa Fe Ry. Co.*, 520 U.S. 510, 515-16 (1997) ("An employer may, of course, retain the unfettered right to alter its promises, but to do so it must follow the formal procedures set forth in the plan.").

In this case, there is no question that the SPDs could not have amended the CIGNA Plan because the Plan provides that only specifically enumerated parties may promulgate amendments; the plan administrator, who has exclusive responsibility for issuing SPDs, is not one of those parties. *See* J.A. 510a ("The Plan may be amended by: a resolution of the Board of Directors of CIGNA Corporation; a resolution by the People Resource Committee of the Board of Directors . . . or by a written instrument approved and executed by one or more duly authorized officers of CIGNA Corporation."); *see also id.* at 695a. Indeed, the SPDs explicitly state that they do not modify the Plan's terms and that the Plan—not the SPDs—controls in the event of any discrepancy *Id.* at 922a, 938a.

Because an SPD is not itself an ERISA plan, and because the SPDs in this case could not have amended the terms of the CIGNA Plan, respondents are not entitled to relief under ERISA § 502(a)(1)(B). Respondents are not seeking "to recover benefits due to [them] under the terms of [the] *plan*." 29 U.S.C. § 1132(a)(1)(B) (emphasis added); *see also Gridley*, 924 F.2d at 1318; *cf. Mass. Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 140 (1985) (emphasizing statutory text's repeated use of the word "plan" in holding that a participant may not recover under ERISA § 502(a)(2) for injuries not to the plan itself). The "terms of [the] plan" are set out in the "written instrument" through which the CIGNA Plan was "established and maintained" (29 U.S.C. § 1102(a)(1)), and those terms do not entitle respondents to the additional benefits awarded by the district court. *See* J.A. 396a-538a.

The district court nevertheless held that the "terms of Part B have been . . . modified by CIGNA's October 1998 and September 1999 Summary Plan Descriptions." Pet. App. 218a; *see also id.* at 197a ("[T]hese representations have become terms of the Plan . . . ."). Although the district court did not provide an explanation for its conclusion, other courts have reasoned that, because "the SPD serves as a summary of the contract's (i.e., the plan document's) key terms . . . a court should read the terms of the 'contract' to include the terms of a plan document, as superseded and modified by conflicting language in the SPD." *Burstein v. Ret. Account Plan for Emps. of Allegheny Health Educ. & Research Found.*, 334 F.3d 365, 381 (3d Cir. 2003); *see also Washington v. Murphy Oil USA, Inc.*, 497 F.3d 453, 458 (5th Cir. 2007).

That reasoning cannot be reconciled with *Curtiss-Wright*'s unambiguous holding that an SPD

cannot amend a plan unless the plan's terms so provide. 514 U.S. at 79. Moreover, these lower-court decisions create a striking anomaly: If publishing an inconsistent SPD can amend plan terms, then an SPD that provides *fewer* benefits than the plan or is otherwise disadvantageous to plan participants should also "supersede[ ] and modif[y]" the plan. In other words, if the phrase "benefits due . . . under the terms of [the] plan" in § 502(a)(1)(B) is read to include benefits under the SPD where the SPD is inconsistent with the plan, then the SPD should control both where it operates to the *benefit* and where it operates to the *detriment* of participants. Section 502(a)(1)(B) does not authorize an award of "benefits under the plan as set out in the written instrument, or as set out in the SPD if the SPD provides additional benefits to participants"—a one-way ratchet that finds no support in the text of the statute.

Courts authorizing such recovery under § 502(a)(1)(B) have also noted the potential harm to participants who have relied on SPDs that conflict with plan terms. *See Heidgerd v. Olin Corp.*, 906 F.2d 903, 907-08 (2d Cir. 1990); *McKnight v. So. Life & Health Ins. Co.*, 758 F.2d 1566, 1570 (11th Cir. 1985). That is undoubtedly an important concern, and clearly one that animates ERISA. But it is no basis to misread ERISA's remedial provisions. *See Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 221 (2002) ("We will not attempt to adjust the carefully crafted and detailed enforcement scheme embodied in the text that Congress has adopted.") (internal quotation marks omitted). And, in any event, the concern with fairness—and particularly the one-way ratchet approach—fits far more comfortably with the principles of equity that under-

gird § 502(a)(3) than with a § 502(a)(1)(B) action for "benefits under [the] plan."

Furthermore, Congress has demonstrated that, where it wants a disclosure violation to modify the terms of an ERISA plan, it knows how to enact a statutory provision that provides such relief. In 2001, Congress amended ERISA to provide just such a remedy for defective § 204(h) notices, which alert participants to a change in a plan that will reduce the rate of future benefit accruals. That amendment provides that, in the case of an "egregious failure" to comply with the notice requirements of § 204(h), "the provisions of the applicable pension plan shall be applied as if such a plan amendment entitled all applicable individuals to the greater of (i) the benefits to which they would have been entitled without regard to such amendment, or (ii) the benefits under the plan with regard to such amendment." 29 U.S.C. § 1054(h)(6)(A). If Congress had intended to provide a comparable remedy for defective SPDs, it would have enacted a similar amendment to ERISA's SPD provisions.

B. In Appropriate Cases, Plaintiffs Can Recover Benefits Based On An Inconsistency Between An SPD And The Plan By Proving Detrimental Reliance Under ERISA § 502(a)(3).

1. ERISA's remedial scheme does not leave participants or beneficiaries who have relied on an inconsistency between an SPD and a plan without recourse. Section 502(a)(3) of ERISA authorizes "appropriate equitable relief . . . to redress . . . violations" of ERISA. 29 U.S.C. § 1132(a)(3)(B). An SPD that fails to correctly summarize plan terms is a violation of ERISA § 102(a)—which requires that an

SPD provide an "accurate" summary of a participant's "benefits and obligations" under the plan. *Id.* § 1022(a). A participant who has relied on an inaccurate SPD therefore may be entitled to "redress" under § 502(a)(3).

As this Court held in *Varity*, misrepresentations made to participants about their benefits are actionable as a claim for breach of fiduciary duty under § 502(a)(3). 516 U.S. at 493-94, 507-15. Following *Varity*, courts of appeals have recognized the availability of a breach-of-fiduciary-duty claim based on a misrepresentation in an SPD. *See, e.g.*, *Burstein*, 334 F.3d at 385-87. In this case, however, respondents expressly disclaimed any such theory of recovery. Pet. App. 43a n.6.

Moreover, some courts have held that § 502(a)(3) also authorizes a participant or beneficiary to bring suit under a promissory-estoppel or equitable-estoppel theory to recover for misleading written representations about plan benefits. *See, e.g.*, *Pell v. E.I. DuPont de Nemours & Co.*, 539 F.3d 292, 300 (3d Cir. 2008) (under § 502(a)(3), "[a] beneficiary can make out a claim for 'appropriate equitable relief' . . . based on a theory of equitable estoppel"); *Kannapien v. Quaker Oats Co.*, 507 F.3d 629, 636 (7th Cir. 2007) (same).[4]

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[4] These courts generally use the terms "promissory estoppel" and "equitable estoppel" interchangeably, although there is a difference that is arguably immaterial in this context. "Promissory is distinct from equitable estoppel in that the representation at issue is promissory rather than a representation of fact." *Black's Law Dictionary* 571 (7th ed. 1999) (internal quotation marks omitted). An SPD that misstates the terms of the plan might be considered a gratuitous promise of future benefits or a

Indeed, courts have explicitly recognized that, in appropriate cases, a plaintiff can invoke an estoppel-like theory under § 502(a)(3) based on an inconsistency between an SPD and the plan. In *Mauser v. Raytheon Co. Pension Plan for Salaried Employees*, 239 F.3d 51 (1st Cir. 2001), for example, the First Circuit held, in an action under § 502(a)(3), that a plan summary is "binding on a plan administrator" as a result of "common law principles of estoppel." *Id.* at 55. Similarly, then-Judge Alito's opinion for the Third Circuit in *Gridley* acknowledged that a claim for benefits based on a deficient SPD could proceed as a promissory-estoppel action under § 502(a)(3), but ultimately concluded that the plaintiff had not satisfied the elements of such a claim. *See* 924 F.2d at 1318-20 & n.6. Here, however, respondents chose not to assert an estoppel claim.[5]

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misrepresentation of the fact of the terms of the plan. Either way, detrimental reliance is required. *See infra* at pg. 23.

[5] Not all breach-of-fiduciary duty and estoppel claims satisfy the requirements of § 502(a)(3). To obtain relief based on an equitable theory of recovery under § 502(a)(3), a plaintiff must demonstrate that "the nature of the underlying remedies sought" is also "equitable" in nature. *Sereboff v. Mid Atl. Med. Servs.*, 547 U.S. 356, 363 (2006) (internal quotation marks omitted). The availability of relief for a deficient SPD under § 502(a)(3) therefore depends on whether the remedy sought was available in courts of equity "[i]n the days of the divided bench" (*id.* at 362 (internal quotation marks omitted)), as well as on the specific nature of the misrepresentation at issue and its impact on a particular participant. *Compare Pell*, 539 F.3d at 305-10 (holding that an injunction requiring the calculation of future benefits under a formula different from the one that would have applied in the absence of a misrepresentation and an award of past-due pension benefits under the new formula were forms of equitable relief available under § 502(a)(3)), *with*

2. Under ordinary principles of equity, an action for redress of a misrepresentation under ERISA § 502(a)(3)—whether framed as breach of fiduciary duty or equitable estoppel—requires a showing of detrimental reliance. *See, e.g., Hooven v. Exxon Mobil Corp.*, 465 F.3d 566, 571 (3d Cir. 2006) ("Detrimental reliance on a material misrepresentation made by the defendant is a necessary element of an ERISA breach of fiduciary duty claim."); *Mello v. Sara Lee Corp.*, 431 F.3d 440, 444-45 (5th Cir. 2005) (equitable estoppel requires "reasonable and detrimental reliance upon the representation").

The reliance requirement is consistent with this Court's description of these equitable actions. The Court has explained, for example, that an "essential element of any estoppel is detrimental reliance on the adverse party's misrepresentations." *Lyng v. Payne*, 476 U.S. 926, 935 (1986) (citing 3 J. Pomeroy, Equity Jurisprudence § 805, at 192 (S. Symons ed. 1941)). More broadly, it "is well established that reliance interests weigh heavily in the shaping of an appropriate equitable remedy." *Lemon v. Kurtzman*, 411 U.S. 192, 203 (1973).

The Second Circuit's virtual-strict-liability standard, which permits a plaintiff to prevail on the thinnest showing of "likely harm" (such as the possibility that the plaintiff could have protested a lawful plan amendment not disclosed in an SPD), cannot be reconciled with these settled principles of equity juris-

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Eichorn v. AT&T Corp., 484 F.3d 644, 654-56 (3d Cir. 2007) (holding that an injunction requiring an adjustment of "pension records retroactively to create an obligation to pay the plaintiffs more money, both in the past and going forward," was not available under § 502(a)(3)).

prudence. Thus, if the Second Circuit had evaluated whether respondents were entitled to recovery under § 502(a)(3), it would have been error for it to do so under the "likely harm" standard.

In any event, respondents did not plead breach of fiduciary duty or equitable estoppel in this case, and made no effort to satisfy the detrimental-reliance requirement. For that reason, this Court should reverse the judgment of the court of appeals because respondents did not pursue the only causes of action potentially available to recover benefits based on an inconsistency between CIGNA's SPDs and the terms of its plan.

II. Even If Plaintiffs Could Recover Benefits Based On An Inconsistency Between An SPD And The Plan Under ERISA § 502(a)(1)(B), A Showing Of Detrimental Reliance Would Be Required.

Even if an action to recover benefits based on an inconsistency between an SPD and a plan could be brought under ERISA § 502(a)(1)(B), that action would still require the plaintiff to prove detrimental reliance. Unlike the Second Circuit's "likely harm" standard, the detrimental-reliance requirement is consistent with ERISA's statutory text, common-law origins, and animating purposes.

A. ERISA's Text Supports A Detrimental-Reliance Requirement.

Although the text of ERISA does not expressly create a cause of action to recover benefits based on an inconsistency between an SPD and the plan, the available statutory indicia establish that a participant cannot recover such benefits unless he detri-

mentally relied on the description of benefits in the SPD.

ERISA § 102 requires than an SPD "be written in a manner calculated to be understood by the average plan participant" and that it "reasonably apprise . . . participants and beneficiaries of their rights and obligations under the plan." 29 U.S.C. § 1022(a); *see also id.* (an SMM "shall be written in a manner calculated to be understood by the average plan participant"). An SPD thus does not *confer* rights on plan participants in the manner of a contract, but rather "apprises" them of their *existing* rights so that the plan terms can be "understood."

Accordingly, a participant cannot be injured by a deficient SPD unless he consults the SPD in order to "apprise" himself "of [his] rights and obligations under the plan" and the SPD causes the participant to misapprehend his rights and obligations. The Second Circuit's "likely harm" standard turns that textual standard on its head. Instead of requiring a plaintiff—or, in class-action suits such as this one, each of 27,000 plaintiffs—to prove detrimental reliance, the Second Circuit places the onus on the defendant to prove that none of the plaintiffs was injured by the inconsistency between the SPD and the plan. Affirming the lower courts' application of that virtual-strict-liability standard in this case would facilitate recovery by thousands of plaintiffs who in all likelihood never read CIGNA's SPDs—let alone detrimentally relied on them.

That is no doubt why the majority of courts of appeals to consider the question have rejected the "likely harm" approach and instead required a showing of detrimental reliance. The First Circuit initially articulated the detrimental-reliance standard

in *Govoni v. Bricklayers, Masons & Plasterers International Union of America, Local No. 5 Pension Fund*, 732 F.2d 250 (1st Cir. 1984) (Breyer, J.), where it held that a plaintiff seeking recovery based on a conflict between an SPD and the plan "must show some significant reliance upon, or possible prejudice flowing from, the faulty plan description." *Id.* at 252. Subsequent courts that have adopted the detrimental-reliance standard have explicitly invoked *Govoni* in support of their holding. *See, e.g.*, *Greeley v. Fairview Health Servs.*, 479 F.3d 612, 614-15 (8th Cir. 2007) (holding that, under *Govoni*, a plaintiff "must show that he took action or failed to take action, that he would not have otherwise, resulting in some detriment"); *see also Health Cost*, 187 F.3d at 711 (holding that a plaintiff may not recover "unless the plan participant or beneficiary has reasonably relied on the summary plan description to his detriment"); *Branch v. G. Bernd Co.*, 955 F.2d 1574, 1578-79 (11th Cir. 1992) ("a beneficiary must prove reliance on the summary").

B. ERISA's Common-Law Backdrop Supports A Detrimental-Reliance Requirement.

To the extent that the text of ERISA does not conclusively resolve the issue, it falls upon this Court to establish a standard for recovery through its development of a "federal common law of rights and obligations under ERISA-regulated plans." *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 831 (2003); *see also Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989). Those common-law considerations also support a detrimental-reliance requirement.

1. In developing the federal common law of ERISA, this Court most frequently looks to the common law of trusts because there are strong indications in the statute's legislative history that Congress intended trust law to be a "starting point" for judicial analysis. *Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 250 (2000); *Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570 & n.10 (1985). Trust law, however, adds little here. The situation in traditional trust law that would be most analogous to this case—a trustee's failure to accurately inform a beneficiary of the terms of the trust in a way that injures the beneficiary—does not appear to have arisen with any frequency.

To be sure, trust law imposes upon trustees a duty to furnish to the beneficiary "such information as is reasonably necessary to enable him to enforce his rights under the trust or to prevent or redress a breach of trust." Restatement (Second) of Trusts § 173 cmt. c; *see also* Restatement (Third) of Trusts § 82 (stating that trustees have a duty to inform beneficiaries "of basic information concerning the trusteeship" and "significant changes in their beneficiary status"). But although a trustee can be held liable where the trustee violates his duties or exceeds his powers because of *the trustee's* misinterpretation of the trust instrument (Restatement (Second) of Trusts § 201 cmt. b), there is not a clear set of trust-law rules addressing the remedy for a trustee's failure to inform the beneficiary about the terms of the trust.[6]

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[6] One thing *is* clear from trust law, however: A beneficiary's action against a trustee for breach of fiduciary duty is not analyzed as a breach of contract. "A trustee who fails to perform

2. Where the common law of trusts does not provide a clear analogy, this Court has also consulted other areas of the common law to fill gaps in ERISA. For example, in *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318 (1992), the Court looked to "traditional agency law principles" to construe the term "employee," which, though nominally defined in ERISA § 3, is defined circularly. *See id.* at 323 (citing 29 U.S.C. § 1002(3)). Similarly, in developing other areas of federal common law or interpreting ambiguous statutory causes of action, this Court has frequently drawn analogies to traditional common-law causes of action. *See, e.g., Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 343 (2005) ("Judicially implied private securities fraud actions resemble in many (but not all) respects common-law deceit and misrepresentation actions."); *Heck v. Humphrey*, 512 U.S. 477, 484 (1994) ("The common-law cause of action for malicious prosecution provides the closest analogy to claims of the type considered . . . .").

Here, the closest analogy among common-law causes of action to the claim that respondents have brought is the family of economic torts premised on misrepresentation, including negligent and fraudulent misrepresentation. And, as explained in the Re-

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his duties as trustee is not liable to the beneficiary for breach of contract." Restatement (Second) of Trusts § 197 cmt. a; *see also id.* §§ 198, 199 (an action "to compel the trustee to redress a breach of trust" was traditionally equitable in character). Accordingly, those courts of appeals that have relied on contract law to support their conclusion that a showing of detrimental reliance is *not* required to recover based on an inconsistency between an SPD and the plan have adopted a mode of analysis that is incompatible with ERISA's trust-law underpinnings. *See Washington*, 497 F.3d at 458; *Burstein*, 334 F.3d at 380-82.

statement (Second) of Torts—"the most widely accepted distillation of the common law of torts" shortly after Congress enacted ERISA (*Field v. Mans*, 516 U.S. 59, 70 (1995))—an *essential* element of those causes of action is the plaintiff's detrimental and justifiable reliance on the defendant's misrepresentation.

Traditionally, an action for negligent misrepresentation would lie where a defendant, "in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions." Restatement (Second) of Torts § 552(1). But, the defendant would be liable *only* "for pecuniary loss caused to [the plaintiffs] by their justifiable reliance upon the information." *Id.* As this Court explained in *United States v. Nestadt*, 366 U.S. 696 (1961), quoting the First Restatement, a defendant is "'subject to liability for harm caused to [plaintiffs] *by their reliance* upon the information'" negligently misrepresented. *Id.* at 708 n.16 (emphasis added); *see also, e.g., Tiara Condo. Ass'n, Inc. v. Marsh & McLennan Cos.*, 607 F.3d 742, 747 (11th Cir. 2010) (Florida law: "injury resulted to a party acting in justifiable reliance upon the misrepresentation"); *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y.*, 375 F.3d 168, 187 (2d Cir. 2004) (New York law: "reliance on the negligent misrepresentation [must be] justified").

Indeed, even an action for *fraudulent* misrepresentation (or "deceit") has traditionally required a plaintiff to prove reliance: "One who fraudulently makes a misrepresentation of fact, opinion, intention or law for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss

caused to him by his justifiable reliance upon the misrepresentation." Restatement (Second) of Torts § 525; *see also Field*, 516 U.S. at 70 ("[B]oth actual and 'justifiable' reliance are required" for fraudulent misrepresentation under the Second Restatement).

The "justifiable reliance" requirement of negligent and fraudulent misrepresentation claims means that, if a plaintiff "does not in fact rely on the misrepresentation, the fact that he takes some action that would be consistent with his reliance on it and as a result suffers pecuniary loss, does not impose any liability upon the maker." Restatement (Second) of Torts § 537 cmt. a. That is precisely the theory of recovery under which respondents proceeded in the district court—that they are entitled to recover so long as they *could* have relied on the deficient SPDs—and it is that theory the Second Circuit endorsed in its "likely harm" standard.

The common law also developed special rules for the specific situation where a defendant under a statutory duty to provide information to a plaintiff misrepresents a material fact. There again, the common law required detrimental reliance: "If a statute requires information to be furnished . . . for the protection of a particular class of persons, one who makes a fraudulent misrepresentation in so doing is subject to liability to the persons for pecuniary loss suffered through their justifiable reliance upon the misrepresentation." Restatement (Second) of Torts § 536. Similarly, liability for negligent misrepresentations "of one who is under a public duty to give the information" also required reliance. *See* Restatement (Second) of Torts § 552(1), (3).

The common law imposed this reliance element on misrepresentation-based claims because requiring

a plaintiff to prove detrimental reliance is the clearest way to determine causation. *See Field*, 516 U.S. at 442 ("No one, of course, doubts that some degree of reliance is required to satisfy the element of causation" for injury arising out of fraudulent conduct).

A plaintiff who has not read and detrimentally relied upon an SPD has not suffered an injury caused by an inconsistency between the SPD and the plan. Requiring proof of detrimental reliance confines the cause of action to those sorts of injuries that ERISA's disclosure requirements were designed to prevent.

3. Those courts of appeals that have rejected a detrimental-reliance requirement have generally relied on the common law of contracts—a view that is at odds with the trust-law origins of ERISA. *See supra* n.6. These circuits have conceptualized a claim for SPD-based benefits as a claim that the plan "contract" has been "superseded and modified by conflicting language in the SPD." *Washington*, 497 F.3d at 458 (internal quotation marks omitted). According to these courts, because "a contract generally does not require proof that the parties to the contract actually read, and therefore relied upon, the particular terms of the contract, . . . enforcement of an SPD's terms under a claim for plan benefits does not require a showing of reliance." *Id.* (internal quotation marks and emphasis omitted); *see also Burstein*, 334 F.3d at 380-82.

But, as *Curtiss-Wright* explicitly holds, an SPD cannot "modif[y]" the underlying "contract" unless the plan's amendment procedures so provide. 514 U.S. at 79. Accordingly, the better way to conceptualize an SPD-based claim in contract-law terms is through the doctrine of promissory estoppel. Under that doctrine, a "promise which the promisor should

reasonably expect to induce action or forbearance on the part of the promisee or a third person and *which does induce such action or forbearance* is binding if injustice can be avoided only by enforcement of the promise." Restatement (Second) of Contracts § 90(1) (emphasis added). An SPD that is inconsistent with the terms of the plan is not an amendment to an ERISA plan but rather a gratuitous promise that may induce some employees to act or forbear from acting to their detriment.

To recover based on that gratuitous promise, a plaintiff must prove detrimental reliance. *See* Williston on Contracts § 8:6 (4th ed. 2001) ("[T]he promisee must have relied upon the promise by acting or forbearing to act on the strength of it."); *see also, e.g., Addicks Servs., Inc. v. GGP-Bridgeland, LP*, 596 F.3d 286, 300 (5th Cir. 2010) (Texas law); *DeVoll v. Burdick Painting, Inc.*, 35 F.3d 408, 412 n.4 (9th Cir. 1994) (federal common law and California law). Thus, even if it were proper to analogize respondents' cause of action to one arising under contract law, detrimental reliance would still be required.

C. ERISA's Statutory Objectives Support A Detrimental-Reliance Requirement.

In filling gaps in ERISA's statutory text, this Court also considers the legislative objectives that animate ERISA. *See, e.g., Conkright v. Frommert*, 130 S. Ct. 1640, 1647 (2010); *De Buono v. NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 813-14 (1997). Like other detailed statutes that were the product of complex legislative negotiations, ERISA strikes a balance among a number of competing objectives—including the protection of employees' vested rights, the freedom of employers to tailor re-

tirement plans to their and their employees' preferences, and the need for efficiency in plan administration. *See Varity*, 516 U.S. at 497.

A detrimental-reliance requirement promotes a number of these important policy objectives—and does so without impeding competing statutory goals.

1. Permitting all plan participants to recover based on an inconsistency between an SPD and the plan—regardless of whether they read (let alone relied on) the SPD—could imperil the actuarial soundness of ERISA defined benefit pension plans. As numerous courts have recognized, one of the key purposes behind ERISA's requirement that a plan be "established and maintained pursuant to a written instrument" is to "protect[ ] the plan's actuarial soundness by preventing plan administrators from contracting to pay benefits to persons not entitled to such under the express terms of the plan." *Mello*, 431 F.3d at 446 (internal quotation marks omitted). Ensuring that a pension plan has adequate funding "depends on stability and predictability"; "[f]orcing trustees of a plan to pay benefits which are not part of the written terms of the program disrupts the actuarial balance of the Plan and potentially jeopardizes the pension rights of others legitimately entitled to receive them." *Cummings by Techmeier v. Briggs & Stratton Ret. Plan*, 797 F.2d 383, 389 (7th Cir. 1986).

Indeed, the written-plan requirement is a critical component of ERISA's broader purpose of ensuring that employees receive the benefits they have been promised under the terms of their plans. As this Court has recognized, "[a]mong the principal purposes of this 'comprehensive and reticulated statute' was to ensure that employees and their beneficiaries

would not be deprived of anticipated retirement benefits by the termination of pension plans before sufficient funds have been accumulated in the plans." *Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 720 (1984). "Congress wanted to guarantee that if a worker has been promised a defined pension benefit upon retirement—and if he has fulfilled whatever conditions are required to obtain a vested benefit—he actually will receive it." *Id.* at 720.

A detrimental-reliance requirement promotes the actuarial soundness of ERISA defined benefit pension plans and preserves employees' legitimate expectations about their benefits. An error in an SPD could potentially have significant consequences for a plan's fiscal well-being if that error entitled every plan participant to additional benefits, regardless of whether they made any decision in reliance on the SPD or even read the SPD.

At the same time, those participants whose benefits were not implicated by the erroneous SPD—for example, employees who retired before the SPD was issued or were hired after a corrected SPD was published—could be adversely affected by an unnecessarily sweeping remedy that imposes significant new plan-funding obligations. Plan funds needed for future pension payments could be depleted. In turn, plan underfunding could trigger legally required benefit payment restrictions that could frustrate employees' retirement planning. Employees could also experience less frequent wage increases and even benefit reductions in the future to compensate for the underfunded pension plan. While these risks may be an acceptable price to pay to compensate those participants and beneficiaries who read and detrimentally relied on deficient SPDs, there is no justifica-

tion for giving other participants and beneficiaries a windfall at the expense of the soundness of the plan. *See Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1519 (10th Cir. 1996). A detrimental-reliance requirement represents a sensible accommodation between fulfilling employees' reasonable expectations and maintaining the plan's long-term financial stability.

These concerns are particularly acute in the class-action context, where a class representative may seek additional benefits on behalf of tens of thousands of plaintiffs, only a handful of whom may have actually relied on the SPD. In such suits, even minor discrepancies between SPDs and plans could result in massive class-wide liability that threatens plans' actuarial soundness.

Moreover, increasing the costs and potential liabilities of operating a pension plan discourages the formation of such plans in the first place. "ERISA represents a 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans." *Conkright*, 130 S. Ct. at 1648-49 (quoting *Davila*, 542 U.S. at 215). In crafting ERISA, "Congress sought to create a system that is [not] so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place." *Id.* at 1649 (internal quotation marks omitted). For that reason, this Court has been understandably reluctant to impose added "litigation expenses" on plans without a clearly compelling ERISA objective that would be advanced through the additional liability.

The increased liability costs of the Second Circuit's virtual-strict-liability regime could potentially be enormous. Instead of facing lawsuits by only

those employees who relied on an inconsistency between an SPD and a plan, employers would be confronted with the prospect of crippling class-wide liability for any stray comment in an SPD that diverged from the terms of the plan, regardless of whether any employees actually altered their conduct based on the SPD. Such staggering liability could discourage employers from establishing pension plans and compel those employers with plans to terminate them.

This litigation risk will also inevitably result in plan administrators' production of lengthy and complicated SPDs in an effort to guard against any possible inconsistency with the plan. Such prolixity is directly contrary to the core purpose of SPDs—which are intended to provide plan participants with a short, simple, and readily understandable summary of their benefits. Indeed, Congress intended that "[d]escriptions of plans furnished to employees . . . be presented in a manner that an average and reasonable worker participant can understand intelligently." H.R. Rep. No. 93-533, at 7 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4646. An increase in the length and complexity of SPDs would herald a return to the pre-ERISA benefits landscape, when the "average plan participant, even where he [was] furnished an explanation of his plan provisions, often [could not] comprehend them because of the technicalities and complexities of the language used." *Id.*

A detrimental-reliance requirement best strikes the balance between creating SPDs on which participants can rely with confidence and not overwhelming participants with technical, legal minutiae about the plan. The requirement ensures that any participant who uses the SPD to make significant decisions about continued employment or other matters can

rely on the SPD as an accurate description of plan terms. At the same time, it does not incentivize plan administrators to draft SPDs so abstruse and dense that they will be useless as basic summaries of plan terms and participant rights.

Finally, by requiring employees to actually *read* their SPDs in order to recover benefits based on an inconsistency with the plan, a detrimental-reliance requirement furthers ERISA's critical purpose of empowering employees to know and enforce their rights under their plans. "[W]hen a beneficiary fails to read or rely on the [SPD], whether it is accurate or not, the beneficiary also prevents full apprisal of the rights under the plan"; "[b]eneficiaries must do their part if Congress' objective is to be met." *Branch*, 955 F.2d at 1579.

2. In contrast, there is nothing in ERISA's statutory objectives that supports awarding windfall benefit recoveries to participants and beneficiaries who never even read or relied on an SPD.

In *Burke v. Kodak Retirement Income Plan*, 336 F.3d 103 (2d Cir. 2003), the Second Circuit made no effort to reconcile its newly devised "likely harm" standard with ERISA's text or common-law underpinnings, but instead reasoned that the "consequences of an inaccurate SPD must be placed on the employer" because "[t]he individual employee is powerless to affect the drafting and less equipped to absorb the financial hardship of the employer's errors." *Id.* at 113. That is no doubt true—which is why an employee who detrimentally relies on an SPD is entitled to recover for her injury. But that fact does not even remotely support awarding a windfall recovery to an employee—or 27,000 employees—who never suffered any "financial hardship" as a result of a de-

ficient SPD. To the contrary, such an award results in significant unfairness to other employees, who may face benefit reductions or wage freezes because of massive, unforeseen pension liabilities.

The Second Circuit also stated that a defendant can, theoretically, "rebut[ ] th[e] presumption of prejudice" that attaches after the plaintiffs have made a minimal showing of "likely harm" by proving "that plaintiffs were aware" of the actual terms of the plan or did not alter their conduct based on the terms of the SPD. *Burke*, 336 F.3d at 114. But this standard, which calls for the defendant to develop evidence about whether each of its thousands of employees read and understood the relevant plan documents, imposes a substantial and unwarranted burden on defendants.

A critical consideration in defining the elements of a common-law cause of action is the "workability" of the potential claim—how it would be proved in practice. *See Wilkie v. Robbins*, 551 U.S. 537, 555 (2007). In most cases—particularly in class actions—the Second Circuit's standard, which places the burden on the defendant to prove that none of the plaintiffs relied on the SPD, will be incredibly difficult to satisfy. "[P]roving a negative is a challenge in any context" (*Vieth v. Jubelirer*, 541 U.S. 267, 311 (2004) (Kennedy, J., concurring in the judgment)), and this is especially true when the inquiry turns on someone else's state of mind.

In contrast, a standard that places the burden to prove detrimental reliance on plaintiffs is relatively straightforward in practice. A plaintiff can testify that she read the SPD, did not know of the contrary or omitted plan terms, and relied on the SPD to make a detrimental employment or retirement deci-

sion that she would not otherwise have made if she had known of the actual terms of the plan. It would be up to the factfinder to evaluate the credibility of the plaintiff's testimony and the plausibility of her explanation of reliance. This is hardly an exacting burden for plaintiffs, given that they need only testify about the state of their *own* minds.[7]

This case is a perfect example of the infeasibility of forcing defendants to shoulder the burden of proving that plaintiffs did not rely on an SPD. CIGNA was required to prove, for each of the 27,000 class members, that the participant or beneficiary either knew about the "wear away" phenomenon in the CIGNA Plan or that, if they had learned about it, they would not have taken any action, such as protesting within the company or finding a new job. In an effort to make this showing, CIGNA demonstrated in the district court that "none of the named Plaintiffs left CIGNA as a result of perceived deficiencies in Part B" and that, "even if Plaintiffs had received all of the information they claim should have been included in the notices and disclosures, no Class members' benefits under Part B would have changed" (*i.e.*, class members did not miss an opportunity to accrue greater benefits). Pet. App. 133a. The district court nevertheless ruled that these showings were insufficient to meet CIGNA's burden because CIGNA did not negate the possibility that respondents would have "protest[ed] at the time Part

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[7] Plaintiffs who truly relied on an inconsistency between an SPD and the plan are regularly successful in meeting the detrimental-reliance requirement. *See, e.g., Kamlet v. Hartford Life & Acc. Life Ins. Co.*, 144 F. App'x 755, 757 (11th Cir. 2005); *Dodson v. Woodmen of the World Life Ins. Soc'y*, 109 F.3d 436, 439 (8th Cir. 1997).

B was implemented" or "fil[ed] a lawsuit like this one" if they had known about the possibility of "wear away." *Id.* at 137a. CIGNA's defense failed because it was unable to prove a negative.[8]

* * *

The "likely harm" standard formulated by the Second Circuit—and applied by no other circuit—lacks any support in ERISA's statutory text, common-law underpinnings, or legislative objectives. Its application permits recovery by plan participants—in this case, thousands of them—who have suffered no injury attributable to the discrepancy between an SPD and the plan—and who may not have even read the SPD. In so doing, the Second Circuit's "likely harm" standard drains the limited plan assets available to fund other participants' pensions, encourages plan administrators to produce needlessly

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[8] The district court cited three cases in which defendants succeeded in rebutting the "presumption" of prejudice under the Second Circuit's standard. *See* Pet. App. 136a (citing *Weinreb v. Joint Diseases Orthopaedic Inst.*, 404 F.3d 167, 171-72 (2d Cir. 2005); *Park v. Trs. of 1199 SEIU Health Care Emps. Pension Fund*, 418 F. Supp. 2d 343, 354 (S.D.N.Y. 2005); *Pastore v. Witco Corp. Severance Plan*, 388 F. Supp. 2d 212, 221 (S.D.N.Y. 2005), *rev'd in part on other grounds*, 196 F. App'x 18 (2d Cir. 2006)). In each of those cases, however, it was *undisputed* that the plaintiff received notice of the relevant plan terms through channels other than the SPD. *See Park*, 418 F. Supp. 2d at 354; *Pastore*, 388 F. Supp. 2d at 221; *Weinreb v. Hosp. for Joint Diseases Orthopaedic Inst.*, 285 F. Supp. 2d 382, 387 (S.D.N.Y. 2003). In the absence of such undisputed facts, it is virtually impossible for a defendant to prove a participant's level of understanding about her benefits. Moreover, none of those cases was brought as a class action. Here, by contrast, the district court required CIGNA to rebut the showing of "likely harm" as to each of 27,000 class members.

prolix SPDs, and deters other employers from providing pension benefits in the first place. It should be rejected by this Court.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

29 U.S.C. § 1022 provides:

§ 1022. Summary plan description

(a) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 1024(b) of this title. The summary plan description shall include the information described in subsection (b) of this section, shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 1024(b)(1) of this title.

(b) The summary plan description shall contain the following information: The name and type of administration of the plan; in the case of a group health plan (as defined in section 1191b(a)(1) of this title), whether a health insurance issuer (as defined in section 1191b(b)(2) of this title) is responsible for the financing or administration (including payment of claims) of the plan and (if so) the name and address of such issuer; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names, titles, and addresses of any trustee or trustees (if they are persons different from the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a de-

scription of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan including the office at the Department of Labor through which participants and beneficiaries may seek assistance or information regarding their rights under this chapter and the Health Insurance Portability and Accountability Act of 1996 with respect to health benefits that are offered through a group health plan (as defined in section 1191b(a)(1) of this title), the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 1133 of this title), and if the employer so elects for purposes of complying with section 1181(f)(3)(B)(i) of this title, the model notice applicable to the State in which the participants and beneficiaries reside.

29 U.S.C. § 1024 provides in relevant part:

§ 1024. Filing with Secretary and furnishing information to participants and certain employees

* * *

(b) Publication of summary plan description and annual report to participants and beneficiaries of plan

Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, a copy of the summary plan description, and all modifications and changes referred to in section 1022(a)(1) of this title—

(A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or

(B) if later, within 120 days after the plan becomes subject to this part.

The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, every fifth year after the plan becomes subject to this part an updated summary plan description described in section 1022 of this title which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period this sentence shall not apply. Notwithstanding the foregoing, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, the summary plan description described in section 1022 of this title

every tenth year after the plan becomes subject to this part. If there is a modification or change described in section 1022(a) of this title (other than a material reduction in covered services or benefits provided in the case of a group health plan (as defined in section 1191b(a)(1) of this title)), a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan. If there is a modification or change described in section 1022(a) of this title that is a material reduction in covered services or benefits provided under a group health plan (as defined in section 1191b(a)(1) of this title), a summary description of such modification or change shall be furnished to participants and beneficiaries not later than 60 days after the date of the adoption of the modification or change. In the alternative, the plan sponsors may provide such description at regular intervals of not more than 90 days. The Secretary shall issue regulations within 180 days after August 21, 1996, providing alternative mechanisms to delivery by mail through which group health plans (as so defined) may notify participants and beneficiaries of material reductions in covered services or benefits.

(2) The administrator shall make copies of the latest updated summary plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent information to all par-

ticipants (including such places as the Secretary may prescribe by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrator (other than an administrator of a defined benefit plan to which the requirements of section 1023(f) of this title applies) shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 1023(b)(3) of this title and such other material (including the percentage determined under section 1023(d)(11) of this title) as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(5) Identification and basic plan information and actuarial information included in the annual report for any plan year shall be filed with the Secretary in an electronic format which accommodates display on the Internet, in accordance with regulations which shall be prescribed by the Secretary. The Secretary shall provide for display of such information included in the annual report, within 90 days after the date of the filing of the annual report, on an Internet web-

site maintained by the Secretary and other appropriate media. Such information shall also be displayed on any Intranet website maintained by the plan sponsor (or by the plan administrator on behalf of the plan sponsor) for the purpose of communicating with employees and not the public, in accordance with regulations which shall be prescribed by the Secretary.

* * *

29 U.S.C. § 1132 provides:

§ 1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter;

(6) by the Secretary to collect any civil penalty under paragraph (2), (4), (5), (6), (7), (8), or (9) of subsection (c) of this section or under subsection (i) or (*l*) of this section;

(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 1169(a)(2)(A) of this title);

(8) by the Secretary, or by an employer or other person referred to in section 1021(f)(1) of this title, (A) to enjoin any act or practice which violates subsection (f) of section 1021 of this title, or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection;

(9) in the event that the purchase of an insurance contract or insurance annuity in connection with termination of an individual's status as a participant covered under a pension plan with respect to all or any portion of the participant's pension benefit under such plan constitutes a violation of part 4 of this title or the terms of the plan, by the Secretary, by any individual who was a participant or beneficiary at the time of the alleged violation, or by a fiduciary, to obtain appropriate relief, including the posting of security if necessary, to assure receipt by the participant or beneficiary of the amounts provided or to be pro-

vided by such insurance contract or annuity, plus reasonable prejudgment interest on such amounts; or

(10) in the case of a multiemployer plan that has been certified by the actuary to be in endangered or critical status under section 1085 of this title, if the plan sponsor—

(A) has not adopted a funding improvement or rehabilitation plan under that section by the deadline established in such section, or

(B) fails to update or comply with the terms of the funding improvement or rehabilitation plan in accordance with the requirements of such section,

by an employer that has an obligation to contribute with respect to the multiemployer plan or an employee organization that represents active participants in the multiemployer plan, for an order compelling the plan sponsor to adopt a funding improvement or rehabilitation plan or to update or comply with the terms of the funding improvement or rehabilitation plan in accordance with the requirements of such section and the funding improvement or rehabilitation plan.

(b) Plans qualified under Internal Revenue Code; maintenance of actions involving delinquent contributions

(1) In the case of a plan which is qualified under section 401(a), 403(a), or 405(a) of Title 26 (or with respect to which an application to so qualify has been filed and has not been finally determined) the Secretary may exercise his authority under subsection (a)(5) of this section with respect to a violation of, or the enforcement of, parts 2 and 3 of this subtitle (relating to participation, vesting, and funding), only if—

(A) requested by the Secretary of the Treasury, or

(B) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe by regulation) that he exercise such authority on their behalf. In the case of such a request under this paragraph he may exercise such authority only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefits under the plan.

(2) The Secretary shall not initiate an action to enforce section 1145 of this title.

(3) Except as provided in subsections (c)(9) and (a)(6) (with respect to collecting civil penalties under subsection (c)(9)), the Secretary is not authorized to enforce under this part any requirement of part 7 against a health insurance issuer offering health insurance coverage in connection with a group health plan (as defined in section 1191b(a)(1) of this title). Nothing in this paragraph shall affect the authority of the Secretary to issue regulations to carry out such part.

(c) Administrator's refusal to supply requested information; penalty for failure to provide annual report in complete form

(1) Any administrator (A) who fails to meet the requirements of paragraph (1) or (4) of section 1166 of this title, section 1021(e)(1) of this title or section 1021(f), or section 1025(a) of this title with respect to a participant or beneficiary, or (B) who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters

reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper. For purposes of this paragraph, each violation described in subparagraph (A) with respect to any single participant, and each violation described in subparagraph (B) with respect to any single participant or beneficiary, shall be treated as a separate violation.

(2) The Secretary may assess a civil penalty against any plan administrator of up to $1,000 a day from the date of such plan administrator's failure or refusal to file the annual report required to be filed with the Secretary under section 1021(b)(1) of this title. For purposes of this paragraph, an annual report that has been rejected under section 1024(a)(4) of this title for failure to provide material information shall not be treated as having been filed with the Secretary.

(3) Any employer maintaining a plan who fails to meet the notice requirement of section 1021(d) of this title with respect to any participant or beneficiary or who fails to meet the requirements of section 1021(e)(2) of this title with respect to any person or who fails to meet the requirements of section 1082(d)(12)(E) of this title with respect to any person may in the court's discretion be liable to such participant or beneficiary or to such person in the amount of up to $100 a day from the date of such failure, and the court may in its discretion order such other relief as it deems proper.

(4) The Secretary may assess a civil penalty of not more than $1,000 a day for each violation by any person of subsection (j), (k), or (l) of section 101 or section 1144(e)(3) of this title.

(5) The Secretary may assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the information required to be filed by such person with the Secretary under regulations prescribed pursuant to section 1021(g) of this title.

(6) If, within 30 days of a request by the Secretary to a plan administrator for documents under section 1024(a)(6) of this title, the plan administrator fails to furnish the material requested to the Secretary, the Secretary may assess a civil penalty against the plan administrator of up to $100 a day from the date of such failure (but in no event in excess of $1,000 per request). No penalty shall be imposed under this paragraph for any failure resulting from matters reasonably beyond the control of the plan administrator.

(7) The Secretary may assess a civil penalty against a plan administrator of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to participants and beneficiaries in accordance with subsection (i) or (m) of section 1021 of this title. For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.

(8) The Secretary may assess against any plan sponsor of a multiemployer plan a civil penalty of not more than $1,100 per day—

(A) for each violation by such sponsor of the requirement under section 1085 of this title to adopt by

the deadline established in that section a funding improvement plan or rehabilitation plan with respect to a multiemployer plan which is in endangered or critical status, or

(B) in the case of a plan in endangered status which is not in seriously endangered status, for failure by the plan to meet the applicable benchmarks under section 1085 of this title by the end of the funding improvement period with respect to the plan.

(9)(A) The Secretary may assess a civil penalty against any employer of up to $100 a day from the date of the employer's failure to meet the notice requirement of section 1181(f)(3)(B)(i)(I) of this title. For purposes of this subparagraph, each violation with respect to any single employee shall be treated as a separate violation.

(B) The Secretary may assess a civil penalty against any plan administrator of up to $100 a day from the date of the plan administrator's failure to timely provide to any State the information required to be disclosed under section 1181(f)(3)(B)(ii) of this title. For purposes of this subparagraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.

(10) Secretarial enforcement authority relating to use of genetic information

(A) General rule

The Secretary may impose a penalty against any plan sponsor of a group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, for any failure by such sponsor or issuer to meet the requirements of subsection (a)(1)(F), (b)(3), (c), or (d) of section 1182 of this title or section 1181 or 1182(b)(1) of this title with

respect to genetic information, in connection with the plan.

(B) Amount

(i) In general

The amount of the penalty imposed by subparagraph (A) shall be $100 for each day in the noncompliance period with respect to each participant or beneficiary to whom such failure relates.

(ii) Noncompliance period

For purposes of this paragraph, the term "noncompliance period" means, with respect to any failure, the period—

(I) beginning on the date such failure first occurs; and

(II) ending on the date the failure is corrected.

(C) Minimum penalties where failure discovered

Notwithstanding clauses (i) and (ii) of subparagraph (D):

(i) In general

In the case of 1 or more failures with respect to a participant or beneficiary—

(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such participant or beneficiary shall not be less than $2,500.

(ii) Higher minimum penalty where violations are more than de minimis

To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting "$15,000" for "$2,500" with respect to such person.

(D) Limitations

(i) Penalty not to apply where failure not discovered exercising reasonable diligence

No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

(ii) Penalty not to apply to failures corrected within certain periods

No penalty shall be imposed by subparagraph (A) on any failure if—

(I) such failure was due to reasonable cause and not to willful neglect; and

(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

(iii) Overall limitation for unintentional failures

In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the plan sponsor (or predecessor plan sponsor) during the preceding taxable year for group health plans; or

(II) $500,000.

(E) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.

(F) Definitions

Terms used in this paragraph which are defined in section 1191b of this title shall have the meanings provided such terms in such section.

(10) The Secretary and the Secretary of Health and Human Services shall maintain such ongoing consultation as may be necessary and appropriate to coordinate enforcement under this subsection with enforcement under section 1320b-14(c)(8) of Title 42.

(d) Status of employee benefit plan as entity

(1) An employee benefit plan may sue or be sued under this subchapter as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the pre-

ceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this subchapter against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this subchapter.

(e) Jurisdiction

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 1021(f)(1) of this title. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

(2) Where an action under this subchapter is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(f) Amount in controversy; citizenship of parties

The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(g) Attorney's fees and costs; awards in actions involving delinquent contributions

(1) In any action under this subchapter (other than an action described in paragraph (2)) by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(2) In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce section 1145 of this title in which a judgment in favor of the plan is awarded, the court shall award the plan—

(A) the unpaid contributions,

(B) interest on the unpaid contributions,

(C) an amount equal to the greater of—

(i) interest on the unpaid contributions, or

(ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),

(D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and

(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of Title 26.

(h) Service upon Secretary of Labor and Secretary of the Treasury

A copy of the complaint in any action under this subchapter by a participant, beneficiary, or fiduciary (other than an action brought by one or more partici-

pants or beneficiaries under subsection (a)(1)(B) of this section which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) of this section on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

(i) Administrative assessment of civil penalty

In the case of a transaction prohibited by section 1106 of this title by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of Title 26) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe in regulations which shall be consistent with section 4975(f)(5) of Title 26) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not apply to a transaction with respect to a plan described in section 4975(e)(1) of Title 26.

(j) Direction and control of litigation by Attorney General

In all civil actions under this subchapter, attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of Title 28), but all such litigation shall be subject to the direction and control of the Attorney General.

(k) Jurisdiction of actions against the Secretary of Labor

Suits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan to review a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this chapter, or to compel him to take action required under this subchapter, may be brought in the district court of the United States for the district where the plan has its principal office, or in the United States District Court for the District of Columbia.

***(l)* Civil penalties on violations by fiduciaries**

(1) In the case of—

(A) any breach of fiduciary responsibility under (or other violation of) part 4 of this subtitle by a fiduciary, or

(B) any knowing participation in such a breach or violation by any other person,

the Secretary shall assess a civil penalty against such fiduciary or other person in an amount equal to 20 percent of the applicable recovery amount.

(2) For purposes of paragraph (1), the term "applicable recovery amount" means any amount which is recovered from a fiduciary or other person with respect to a breach or violation described in paragraph (1) —

(A) pursuant to any settlement agreement with the Secretary, or

(B) ordered by a court to be paid by such fiduciary or other person to a plan or its participants and beneficiaries in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5) of this section.

(3) The Secretary may, in the Secretary's sole discretion, waive or reduce the penalty under paragraph (1) if the Secretary determines in writing that—

(A) the fiduciary or other person acted reasonably and in good faith, or

(B) it is reasonable to expect that the fiduciary or other person will not be able to restore all losses to the plan (or to provide the relief ordered pursuant to subsection (a)(9) of this section) without severe financial hardship unless such waiver or reduction is granted.

(4) The penalty imposed on a fiduciary or other person under this subsection with respect to any transaction shall be reduced by the amount of any penalty or tax imposed on such fiduciary or other person with respect to such transaction under subsection (i) of this section and section 4975 of Title 26.

(m) Penalty for improper distribution

In the case of a distribution to a pension plan participant or beneficiary in violation of section 1056(e) of this title by a plan fiduciary, the Secretary shall assess a penalty against such fiduciary in an amount equal to the value of the distribution. Such penalty shall not exceed $10,000 for each such distribution.

RESPONDENT'S BRIEF

Supreme Court, U.S.
FILED
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No. 09-804

In The

Supreme Court of the United States

CIGNA CORPORATION and CIGNA PENSION PLAN,
Petitioners,

v.

JANICE C. AMARA, GISELA R. BRODERICK, ANNETTE S. GLANZ, Individually and on Behalf of All Others Similarly Situated,
Respondents.

On Writ of Certiorari to The United States Court of Appeals For the Second Circuit

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OCTOBER 2010

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QUESTION PRESENTED

Whether a district court, after finding material omissions and misleading statements in summary descriptions in violation of ERISA's disclosure requirements and unrebutted likely harm to employees from the violations, cannot order relief unless the district judge conducts individual hearings (in this case involving as many as 27,000 plaintiffs) to determine how each employee "detrimentally relied" on the omissions and misleading statements.

TABLE OF CONTENTS

Page

STATUTORY PROVISIONS 1

STATEMENT 2

1. CIGNA's Conversion to a Cash Balance Plan.... 5

2. The Decisions Below 8

SUMMARY OF ARGUMENT 13

ARGUMENT 17

I. PLAN PARTICIPANTS ARE ENTITLED TO THE BENEFITS CIGNA PROMISED IN THE PLAN SUMMARIES 17

A. CIGNA May Not Revisit the Unappealed Findings that It Materially Misled Its Employees About Benefit Reductions to Avoid an Employee "Backlash". 18

B. Under ERISA, SPDs Are Among the "Plan Documents" Governing the Plan..... 21

C. In Cases of Conflict Between an SPD and Underlying Plan Language, ERISA Requires the SPD to Control 27

D. The Determination of Whether an SPD Conflicts With the Terms of a Formal Plan Document Is an Objective One..... 30

E. Participants Are Entitled to Relief If There Is a Material Conflict; If a Showing of Prejudice Is Required, It Should Be Possible Prejudice to an Average Plan Participant. 33

F. Respondents Properly Sued Under ERISA's Section 502(a)(1)(B) "to Recover Benefits Due ... Under the Terms of [the] Plan." 37

G. ERISA's Duty to Disclose Is Consistent with Contract and Trust Law 42

H. Neither the Material Conflict Standard Nor the Second Circuit's Likely Prejudice/Harmless Error Standard Establishes "Virtual-Strict-Liability." 46

II. THE COURT SHOULD NOT IMPOSE A DETRIMENTAL RELIANCE REQUIREMENT THAT CONGRESS NEITHER ADOPTED NOR INTENDED .. 48

A. CIGNA's Effort to Imply Detrimental Reliance Based on Analogies to Tort Law and Promissory Estoppel Is at Odds with *Bridge v. Phoenix Bond & Indemnity*. 48

B. Requiring Individual Demonstrations of Detrimental Reliance Is Unrealistic and Would Undermine Consistent, Plan-wide Enforcement of ERISA's Disclosure Rules . 52

CONCLUSION 59

STATUTORY APPENDIX 1a

TABLE OF AUTHORITIES

FEDERAL CASES

2 Tudor City Place Associates v. 2 Tudor City Tenants Corp., 924 F.2d 1247 (2d Cir. 1991) 42

Ackerman v. Wyeth Pharms., 526 F.3d 203 (5th Cir. 2008) 55

Aiken v. Policy Management Systems Corp., 13 F.3d 138 (4th Cir. 1993) 4

Alday v. Container Corp. of America, 906 F.2d 660 (11th Cir. 1990), *cert. denied*, 498 U.S. 1026 (1991) 26

Arnold v. Arrow Transport Co., 926 F.2d 782 (9th Cir. 1991) 30

Atwood v. Newmont Gold Co., 45 F.3d 1317 (9th Cir. 1995) 46

Bard v. Boston Shipping Association, 471 F.3d 229 (1st Cir. 2006) 27

Basic Inc. v. Levinson, 485 U.S. 224 (1988) 53, 57

In re Beck Ind., Inc., 605 F.2d 624 (2d Cir. 1979) 43

Estate of Becker v. Eastman Kodak Co., 120 F.3d 5 (2d Cir. 1997) 47

Bergt v. Retirement Plan for Pilots Employed by Mark Air, Inc., 293 F.3d 1139 (9th Cir. 2002) 4, 24, 27

Bixler v. Central Pa. Teamsters Health & Welfare Fund, 12 F.3d 1292 (3d Cir. 1993) 45

Black & Decker Disability Plan v. Nord, 538 U.S. 822 (2003) 52

Blackshear v. Reliance Standard Life Insurance Co., 509 F.3d 634 (4th Cir. 2007) 27

Board of Trustees of the CWA/ITU Negotiated Pension Plan v. Weinstein, 107 F.3d 139 (2d Cir. 1997) 21

Branch v. G. Bernd Co., 955 F.2d 1574 (11th Cir. 1992) 4, 34, 36

Bridge v. Phoenix Bond & Indemnity, 553 U.S. 639 (2008) 16, 49-52

Burke v. Kodak Retirement Income Plan, 336 F.3d 103 (2d Cir. 2003), *cert. denied*, 540 U.S. 1105 (2004) 3, 10, 34-36

Burlington Northern & Santa Fe Railway v. White, 548 U.S. 53 (2006) 15

Burstein v. Retirement Account Plan for Employees of Allegheny Health Education & Research Foundation, 334 F.3d 365 (3d Cir. 2003) ..... 3 & *passim*

Central Laborers v. Heinz, 541 U.S. 739 (2004) 41

Chiles v. Ceridian Corp., 95 F.3d 1505 (10th Cir. 1999) 4, 26-27

Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73 (1995) 29

Daniel v. International Broth. of Teamsters, 561 F.2d 1223 (7th Cir. 1977) 19

Depenbrock v. CIGNA Corp., 389 F.3d 78 (3d Cir. 2004) 5

Dodson v. Woodmen of the World, 109 F.3d 436 (8th Cir. 1997) 58

Eddy v. Colonial Life Insurance Co., 919 F.2d 747 (D.C. Cir. 1990) 45

Edwards v. State Farm Mutual Automobile Insurance Co., 851 F.2d 134 (6th Cir. 1988) 3, 28, 35, 52

FTC v. Figgie International, 994 F.2d 595 (9th Cir. 1993), *cert. denied*, 510 U.S. 1110 (1994) 53

Farmers & Merchandises Bank of Monroe v. Federal Reserve Bank of Richmond, 262 U.S. 649 (1923) 42

Frommert v. Conkright, 433 F.3d 254 (2d Cir. 2006) 41, 47

Fuller v. FMC Corp., 4 F.3d 255 (4th Cir. 1993), *cert. denied*, 510 U.S. 1115 (1994) 30

Govoni v. Bricklayers, Masons & Plasterers Local 5 Pension Fund, 732 F.2d 250 (1st Cir. 1984) 4, 34

Greeley v. Fairview Health Services, 479 F.3d 612 (8th Cir. 2007) 36

Gridley v. Cleveland Pneumatic Co., 924 F.2d 1310 (3d Cir. 1991) 39

Griggs v. E.I. DuPont De Nemours & Co., 237 F.3d 371 (4th Cir. 2001) 45

Halbach v. Great-West Life and Annuity Insurance Co., 561 F.3d 872 (8th Cir. 2009) 27

Hansen v. Continental Insurance Co., 940 F.2d 971 (5th Cir. 1991) 15, 28

Heffner v. Blue Cross & Blue Shield of Alabama, Inc., 443 F.3d 1330 (11th Cir. 2006) 34

Heidgerd v. Olin Corp.,
906 F.2d 903 (2d Cir. 1990).....14, 27-28

Helwig v. Kelsey-Hayes Co.,
93 F.3d 243 (6th Cir. 1996),
cert. denied, 519 U.S. 1059 (1997) 27

Hightshue v. AIG Life Insurance Co.,
135 F.3d 1144 (7th Cir. 1998) 4

Hooven v. Exxon Mobil Corp.,
465 F.3d 566 (3d Cir. 2006).....47

Hughes Aircraft Co. v. Jacobson,
525 U.S. 432 (1999) 20

Hughes v. 3M Retiree Medical Plan,
281 F.3d 786 (8th Cir. 2002) 26

IUE v. Murata Erie N. America, Inc.,
980 F.2d 889 (3d Cir. 1992).....48

Jensen v. Solvay Chemicals Inc.,
__ F.3d __, 2010 WL 3472945
(10th Cir. 9/7/10) 32

Jensen v. SIPCO,
38 F.3d 945 (8th Cir. 1994).....25-27

Kamlet v. Hartford Life and
Acc. Life Ins. Co.,
144 Fed.Appx. 755 (11th Cir. 2005).....34

Kennedy v. Plan Admin. for DuPont Sav. & Investment Plan,
129 S. Ct. 865 (2009) 14, 16, 25-26, 39

Kenseth v. Dean Health Plan, Inc.,
610 F.3d 452 (7th Cir. 2010) 45

Kloepfer v. Honda Motor Co.,
898 F.2d 1452 (10th Cir. 1990) 57

Krohn v. Huron Mem. Hospital,
173 F.3d 542 (6th Cir. 1999) 45

L. P. Steuart & Bro., Inc. v. Bowles,
322 U.S. 398 (1944) 18

Layaou v. Xerox Corp.,
238 F.3d 205 (2d Cir. 2001) 24

Lockheed Corp. v. Spink,
517 U.S. 882 (1999) 20

Lorenzen v. Emples. Retirement Plan of Sperry & Hutchinson Co.,
896 F.2d 228 (7th Cir. 1990) 47

Lyng v. Payne, 476 U.S. 926 (1986) 50-51

Manginaro v. Welfare Fund of Local 21,
21 F. Supp. 2d 284 (S.D.N.Y. 1998) 56

Marolt v. Alliant Techsystems, Inc.,
146 F.3d 617 (8th Cir. 1998) 4, 25

Mass. Mutual Life Insurance Co. v. Russell, 473 U.S. 134 (1985) 38, 51

May Department Stores v. Federal Insurance Co., 305 F.3d 597 (7th Cir. 2002) 41

McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184 (2d Cir. 2007).....46

McDowell v. Krawchison, 125 F.3d 954 (6th Cir. 1997) 15, 31

McKnight v. Southern Life & Health Insurance Co., 758 F.2d 1566 (11th Cir. 1985) 27

Mers v. Marriott International Group Accidental Death & Dismemberment Plan, 144 F.3d 1014 (7th Cir. 1998), *cert. denied*, 525 U.S. 947 (1998) 27

Mills v. Electric Automobile-Lite Co., 396 U.S. 375 (1970) 53

Morris v. Wachovia Securities, 448 F.3d 268 (4th Cir. 2006) 44

Morrison v. Marsh & McLennan Cos., 439 F.3d 295 (6th Cir. 2006) 27

Norfolk & W. Railway v. American Train Dispatchers Association, 499 U.S. 117 (1991) 42

Page v. PBGC,
968 F.2d 1310 (D.C. Cir. 1992) 40

Pierce v. Security Trust Life Insurance Co., 979 F.2d 23 (4th Cir. 1992).....24, 47

Rendler v. Corus Bank, N.A.,
272 F.3d 992 (7th Cir. 2001) 32

Estate of Ritzer v. National Organization of Industrial Trade Unions Insurance Trust Fund,
822 F. Supp. 951 (E.D.N.Y. 1993).....56

Ross v. Rail Car America Group Disability Income Plan,
285 F.3d 735 (8th Cir.),
cert. denied, 537 U.S. 885 (2002) 26

Ryder Truck Lines, Inc. v. Brennan,
497 F.2d 230 (5th Cir. 1974) 32

Savino v. Computer Credit,
164 F.3d 81 (2d Cir. 1998).....32

Schad v. Stamford Health System,
2009 WL 4981271, 2009 U.S. App. LEXIS 27939 (2d Cir. Dec. 21, 2009).....47

Scharff v. Raytheon Co. Short-Term Disability Plan,
581 F.3d 899 (9th Cir. 2009),
cert. denied, 130 S.Ct. 3508 (6/28/10) 55

Schoonejongen v. Curtiss-Wright Corp.,
143 F.3d 120 (3d Cir. 1998) 57

Smith v. Rogers Galvanizing Co.,
128 F.3d 1380 (10th Cir. 1997) 31

Spitz v. Tepfer,
171 F.3d 443 (7th Cir. 1999) 27

Stahl v. Tony's Building Materials,
875 F.2d 1404 (9th Cir. 1989) 47

Syverson v. IBM,
472 F.3d 1072 (9th Cir. 2007) 31

Thomforde v. IBM,
406 F.3d 500 (8th Cir. 2005) 31

Tocker v. Philip Morris,
470 F.3d 481 (2d Cir. 2006) 47

Unum Life Insurance v. Ward,
526 U.S. 358 (1999) 41

Varity Corp. v. Howe,
516 U.S. 489 (1996) 18, 38

Washington v. Department of Transportation,
8 F.3d 296 (5th Cir. 1993) 57

Washington v. Murphy Oil USA, Inc.,
497 F.3d 453 (5th Cir. 2007) ..... 3 & *passim*

Weinreb v. Hospital for Joint Diseases Orthopaedic Institute, 404 F.3d 167 (2d Cir. 2005) 47

West v. AK Steel Retirement Accum. Plan, 484 F.3d 395 (6th Cir. 2007), *cert. denied*, 129 S.Ct. 895 (2009) 40

Williams v. Rohm & Haas Pension Plan, 497 F.3d 710 (7th Cir. 2007), *cert. denied*, 128 S.Ct. 1657 (2008) 18

Wilson v. Southwestern Bell Telegraph, 55 F.3d 399 (8th Cir. 1995) 30

Wise v. El Paso Natural Gas Co., 986 F.2d 929 (5th Cir. 1993) 27

Yokoyama v. Midland National Life Insurance Co., 594 F.3d 1087 (9th Cir. 2010) 32

Young v. Verizon's Bell Atlantic Cash Balance Plan, 615 F.3d 808 (7th Cir. 2010) 47

STATE CASES

Basile v. H & R Block, Inc., 729 A.2d 574 (Pa. Super. 1999) 44

Cooper v. Automobile Club Association, 751 N.W.2d 443 (Mich. 2008) 55

Edmunds v. Valley Circle Estates,
20 Cal. Rptr. 2d 701 (Cal. App. 1993).....44

Thigpen v. Locke,
363 S.W.2d 247 (Tex. 1963) 44

FEDERAL STATUTES, REGULATIONS, LEGISLATIVE HISTORY, AND RULES

15 U.S.C. 78r.....49

18 U.S.C. §1961 49

26 U.S.C. §626(f)(1) 31

ERISA §2(b),
29 U.S.C. §1001(b).....38

ERISA §102,
29 U.S.C. §1022 ..... 3 & *passim*

ERISA §104(b)(1),
29 U.S.C. §1024(b)(1) 24-26

ERISA §109(c),
29 U.S.C. §1029(c) 26

ERISA §204(b)(5)(B)(iii),
29 U.S.C. §1054(b)(5)(B)(iii).....7

ERISA §204(h),
29 U.S.C. §1054(h).....8, 31-32

ERISA §402(b)(3),
29 U.S.C. §1102(b)(3) 29

ERISA §404(a)(1)(D),
29 U.S.C. §1104(a)(1)(D) ..... 1 & *passim*

ERISA §502(a)(1)(B),
29 U.S.C. §1132(a)(1)(B) ..... 16 & *passim*

ERISA §502(a)(3),
29 U.S.C. §1132(a)(3) 16, 31, 37-38, 40

ERISA §4022(a),
29 U.S.C. §1322(a) 40

17 C.F.R. 240.10b-5(b),
SEC Rule 10b-5 49

26 C.F.R. 54.4980F-1 31

29 C.F.R. 1625.22(b) 31

29 C.F.R. 2520.102-2 ..... 1, 23

29 C.F.R. 2520.102-3(l) 1, 23

29 C.F.R. 2520.104b-3 ..... 1, 24

29 C.F.R. 2590.606-1(c) 31

Welfare and Pension Plans Disclosure
Act of 1958 ("WPPDA"), P.L. 85-836,
as amended by P.L. 87-420 ..... 19, 21

P.L. 109-280, §701(a)(1) 7

H. Rep. 93-533,
1974 U.S.C.C.A.N. 4639 ..... 17, 21-23, 42

S. Rep. 93-127,
1974 U.S.C.C.A.N. 4838 ..... 16, 19, 21-22, 42

S. Rep. 85-1440,
1958 U.S.C.C.A.N. 4137 19

II ERISA Leg. Hist. 1609
(Committee Print) 20

III ERISA Leg. Hist. 4750
(Committee Print) 22

42 Fed. Reg. 14266 (3/15/77) 24

Sup. Ct. R. 24.1(a) 38

MISCELLANEOUS

Appleman, *Insurance Law & Practice*
(1981) 26

Lisa J. Bernt, *"Finding the Right Jobs for the Reasonable Person in Employment Law,"* 77 UMKC L. Rev. 1 (Fall 2008) 30

Black's Law Dictionary (7th ed.) 36

Bogert, *Trusts* (6th ed.) 15, 44

Bogert, *Law of Trusts & Trustees*
(rev'd 2d ed.) 44

Couch on Insurance 3d 26

Res. (Sec.) of Contracts 44, 57

Res. (Sec.) of Torts.....50

Res. (Sec.) of Trusts.....15, 42, 44

Res. (Third) of Trusts.....43

Williston on Contracts (4th ed.).....49

STATUTORY PROVISIONS INVOLVED

In addition to the authorities in Petitioners' Appendix, this case involves ERISA §404(a)(1)(D), 29 U.S.C. §1104(a)(1)(D), 29 C.F.R. 2520.102-2 and –3(l) and 29 C.F.R. 2520.104b-3. In pertinent part:

ERISA §404(a)(1)(D) provides that "a fiduciary shall discharge his duties...in accordance with the documents and instruments governing the plan insofar as [they] are consistent with the provisions of this title and title IV."

29 C.F.R. 2520.102-2 provides that "[t]he format of the summary plan description must not have the effect of misleading, misinforming or failing to inform participants and beneficiaries. Any description of exception, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure or otherwise made to appear unimportant."

29 C.F.R. 2520.102-3(l) provides that the summary plan description shall include "a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture, suspension, offset, reduction, or recovery...of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits required by paragraphs (j) and (k)."

29 C.F.R. 2520.104b-3 provides that a plan administrator "shall...furnish a summary description of any material modification to the plan and any change in the information required by section 102(b) of the Act and § 2520.102-3 of these regulations to be included in the summary plan description to each

participant covered under the plan and each beneficiary receiving benefits under the plan."

STATEMENT

This case grows out of CIGNA's conversion of its traditional defined benefit pension plan to a "cash balance" design effective January 1, 1998. In that conversion, CIGNA promised employees that the cash balance plan would result in benefit "enhancements", Pet.App. 31a, 34a, with steady "growth" in benefits after the conversion and "comparable" or "larger" benefits in the long-run. *Id.* at 37a. Employees were promised that "[e]ach dollar's worth of credits is a dollar of retirement benefits payable to you." *Id.* at 36a, 40a. These promises were made in the summary descriptions which ERISA requires to be distributed to employees as the primary means of communicating their benefit rights.

After a seven-day bench trial, the district court concluded that the promises that CIGNA made were false or misleading because, as CIGNA knew, the terms of the formal plan documents led to periods of "wear-away" in which no benefits were earned and to significantly lower benefits after those periods ended. Pet.App. 25a-26a, 101a-103a, 121a-123a. CIGNA's failure to disclose the periods of wear-away and benefit reductions meant that employees continued to provide their labor to CIGNA (and in some cases accepted offers to return to CIGNA) not knowing that their total compensation was being cut. The district court found that "CIGNA wished to avoid the employee backlash likely to result from a thorough discussion" of the effects of the conversion it planned, and "sought to negate the risk of backlash by

producing affirmatively and materially misleading notices" regarding the actual effects of the conversion. Pet.App. 114a. CIGNA did not appeal any of these findings.

Congress adopted ERISA §102, 29 U.S.C. §1022, to address the deficiencies in disclosures that Congress found before ERISA. ERISA §102(a) requires a "summary plan description" ("SPD") to be distributed to employees that is "sufficiently accurate and comprehensive to reasonably apprise such participants ...of their rights and obligations under the plan." When a material change is made to a plan's terms, a "summary of material modification" (SMM) must be distributed. *Id.* Both documents must be "written in a manner calculated to be understood by the average plan participant." *Id.*

Eleven circuits have held that when a description of benefits in a summary plan document conflicts with the terms of the formal plan documents, the summary description controls. *See* p. 27, *infra*. The circuits have disagreed only on whether the summary description controls once a material conflict is shown (the Third, Fifth and Sixth Circuits[1]), or whether the plaintiff or plaintiffs must also show "likely harm" from the conflict which the defendant can rebut by showing "harmless error" (the Second Circuit[2]), or "some significant reliance

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[1] *See Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. & Research Found.*, 334 F.3d 365, 381 (3d Cir. 2003); *Washington v. Murphy Oil USA, Inc.*, 497 F.3d 453, 458-59 (5th Cir. 2007); *Edwards v. State Farm Mutual Auto. Ins. Co.*, 851 F.2d 134, 137 (6th Cir. 1988).

[2] *Burke v. Kodak Ret. Income Plan*, 336 F.3d 103, 110 (2d Cir. 2003), *cert. denied*, 540 U.S. 1105 (2004).

upon, or some possible prejudice flowing from, the faulty plan description" (the First, Fourth, Seventh, Eighth, Tenth and Eleventh Circuits[3]).

In its brief, CIGNA contends that its current and former employees should not be able to recover for the undisclosed periods of wear-away without "individualized" showings of "detrimental reliance" on the now-concededly "totally inadequate" summary descriptions. CIGNA contends that "each" of the 27,000 plan participants should be required to testify in person that he or she: (1) read the totally inadequate summary descriptions, (2) was deceived into believing that the conversion had no periods of wear-away, and (3) would have taken some specific employment or retirement action if he or she had known that no additional retirement benefits were being earned for a period of years. CIGNA Br. 38-39.

CIGNA does not ground its request for subjective "state of mind" testimony from 27,000 individuals on any statutory text, but contends that this Court should require this as a matter of "federal common law" consistent with "maintaining the plan's long

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[3] *See Govoni v. Bricklayers, Masons & Plasterers Local 5 Pension Fund*, 732 F.2d 250, 252 (1st Cir. 1984) (Breyer, J.); *Aiken v. Policy Mgmt. Systems Corp.*, 13 F.3d 138, 141 (4th Cir. 1993); *Hightshue v. AIG Life Ins. Co.*, 135 F.3d 1144, 1149 (7th Cir. 1998); *Marolt v. Alliant Techsystems, Inc.*, 146 F.3d 617, 621 (8th Cir. 1998); *Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1519 (10th Cir. 1999); *Branch v. G. Bernd Co.*, 955 F.2d 1574, 1578-79 (11th Cir. 1992).

The Ninth Circuit appears to agree with the position of the Third, Fifth and Sixth Circuits. See *Bergt v. Ret. Plan for Pilots Employed by Mark Air, Inc.*, 293 F.3d 1139, 1145 (9th Cir. 2002). The D.C. Circuit has not addressed the issue.

term financial stability." Br. 26-28, 35. The plain result of CIGNA's proposed rules would be to impose tremendous burdens on the trial court and the members of the class, while CIGNA would have no burden "at all." Suppl. Pet.Br. at 9. Under CIGNA's scheme, participants could never win on summary judgment and could never prevail in a class action without testimony from each individual class member. Predictably, an overwhelming percentage of this nationwide class would not participate in any such proceedings and CIGNA would only have to pay its current and former employees a small fraction of the benefits that were lost under its deliberately undisclosed "wear-away" design.

1. CIGNA's Conversion to a Cash Balance Plan

As is widely-recognized, conversions of traditional defined benefit pension plans to "cash balance" plans were part of an "effort to curb costs by, inter alia, scaling back the benefits provided under pension plans." *Depenbrock v. CIGNA Corp.*, 389 F.3d 78, 79 (3d Cir. 2004). Unlike many cost-curbing measures, cash balance conversions often hid this objective. The *Wall Street Journal* quoted an actuary from the consulting company credited with developing the cash balance design: "If you decide your plan's too rich, and you want to cut back, ... changing to a different type of plan will let you do that *without being obvious about it.*" Record 262 (Pl. Trial Ex 67) (emphasis added).

In a July 1996 PowerPoint presentation, CIGNA's consultant, Mercer, touted one of the advantages of a cash balance conversion as the ability to "mask[] a cut in pension plan benefits" from employees. JA 808a. A May 5, 1999 *Wall Street Journal* article

quoted actuarial consultants, including from Mercer, joking at a Society of Actuaries' meeting about how employees were fooled: "You switch to a cash-balance plan where people are probably getting smaller benefits, at least the older-longer-service people; but they are really happy and they think you are great for doing it." "It is not until they are ready to retire that they understand how little they are actually getting." "Right, but they're happy while they're employed." Record 262 (Pl. Trial Ex. 67).

Effective January 1, 1998, CIGNA moved more than 27,000 employees from its traditional defined benefit plan to a cash balance plan. Pet.App. 16a-17a. Several thousand relatively older, longer-service employees including CIGNA's CEO were grandfathered under the traditional plan. *Id.* at 16a, JA 756a. As was typical in conversions to cash balance plans, the benefits employees had earned under the prior plan were "frozen" and in this case called "Part A" benefits. Pet.App. 14a-17a. Benefits under the new cash balance plan were called "Part B" benefits. *Id.* at 16a-18a. Although some employers provided "A plus B" benefits after cash balance conversions, CIGNA's plan provided that employees would receive the "greater of A or B." *Id.* at 13a-14a. Because CIGNA provided that each participant would have an opening Part B account based on the value of his or her Part A benefit, CIGNA's plan still appeared, on the surface, to promise that employees would receive the value of their Part A benefits plus their new cash balance benefits under Part B.

Employees did not know they were unlikely to get anywhere close to the same benefits under the new plan because of undisclosed choices CIGNA made in

calculating the value of the opening Part B account and because the future formula was designed to offer much lower benefits than before. Pet.App. 23a-27a. Those undisclosed choices made the value of the opening Part B account lower than the value of the Part A annuity benefit. This involved assumptions relating to interest rates and mortality risk, as well as CIGNA's decision not to include the value of certain early retirement benefits in calculating the opening Part B accounts (*Id.* at 23a-27a). When the Part B opening balance was lower than the Part A benefit, it might take many years before the difference was "worn away" so that the value of the Part B account exceeded the value of the Part A benefit. *See* Pet.App. 25a. These were complex matters of a sort that a lay person would be unlikely to comprehend even if he or she were to read the formal plan documents.

Ultimately, almost all of the participants who were moved to the cash balance formula received lower benefits than if the conversion had not occurred, and lower benefits than if an "A plus B" transition had been used. The older, longer-service employees who were not grandfathered (like named plaintiffs Amara and Broderick) were hardest hit. The conversion resulted in periods of wear-away with no additional benefits for approximately 21,000 of CIGNA's 27,000 employees and lower future benefits for virtually everyone who was not grand-fathered. Pet.App. 101a-103a, 199a. A few years after the conversion at issue here, Congress amended ERISA so that it is now illegal to design a cash balance conversion with "wear-aways," with or without full disclosure. Conversions must now always provide for at least an "A plus B" transition. 29 U.S.C. §

1054(b)(5)(B)(iii), as amended by P.L. 109-280, §701(a)(1).

2. The Decisions Below

This case was decided after a seven-day trial. The trial judge, Judge Mark R. Kravitz of the District of Connecticut, heard testimony from nine lay witnesses and three experts and admitted more than 500 exhibits into evidence. CIGNA did not appeal any of the trial court's findings.

The district court found that CIGNA failed not only to disclose reductions for those who were transferred to cash balance, but affirmatively misled participants in its ERISA §204(h) notice, SMM, and SPD. The district court found that CIGNA portrayed a large benefit reduction as an "enhancement" that offered "comparable" or "larger" benefits with no "cost savings" for CIGNA. Pet.App. at 31a, 34a, 37a; *see* JA 990a, 993a, 947a-948a, 952a. CIGNA told the employees that "you will see the growth in your total retirement benefits from CIGNA every year" and that "each dollar's worth of credits is a dollar of retirement benefits payable to you." Pet.App. 36a-37a; *see* JA 906a, 928a, 952a, 963a. CIGNA also misled employees into "believ[ing] that their early retirement benefits were fully protected as part of their minimum benefit and/or their opening account balance under Part B." Pet.App. 129a. CIGNA's claims were false because the plan resulted in periods of "wear-away" where participants continued to work without earning additional benefits and much lower benefits after the wear-away periods ended. Pet.App. 25a-26a, 121a-123a. For example, CIGNA's wear-away design reduced Ms. Amara's existing benefits to "less than half" of their previous

level so it "would take over 10 years" before her cash balance benefits would catch up. *Id.* at 23a, 25a.

The district court found that "[w]ear away means that there are periods of time in which the employee's account balance is less than the employee's minimum benefit." Pet.App. 24a-25a. "[I]n effect, where there is wear away, even though the employee continues to work for CIGNA and continues to receive benefit credits, the employee's expected retirement benefits have not grown beyond what the employee was entitled to under [CIGNA's Pension Plan] as of December 31, 1997." *Id.* at 25a. The district court determined the periods of wear-away were "predictable and known to CIGNA," Pet.App. 119a, and that "CIGNA was aware of the significant reduction in the rate of future benefit accrual." *Id.* at 114a.

The district court found that CIGNA's disclosures were "inadequate under ERISA and in some instances, downright misleading" and that CIGNA engaged in "efforts to conceal the full effects" of the changes "to avoid the employee backlash likely to result from a thorough discussion" of the reductions and periods of wear-away. *Id.* at 8a, 114a, 137a. The court found that CIGNA instructed its consultant (Mercer) "not to compare the old to the new plans" in drafting communications for employees. *Id.* at 112a; *see* JA 817a. After CIGNA distributed its SMM and SPDs to employees, CIGNA also instructed its own benefits personnel "NOT" to provide accurate comparative information in written communications or in response to individual inquiries. *Id.* at 112a-113a; *see* JA 834a-837a.

The district court determined that "CIGNA had a duty to inform plan participants of the possibility of wear away in its notices and disclosures regarding Part B.... The possibility of wear away was certainly a material fact regarding Part B, as some CIGNA employees' pension benefits did not grow for several years as a result of the phenomenon." *Id.* at 123a. The Court found that "CIGNA admit[ted] that it nowhere informed its employees that they might not be accruing benefits under Part B." *Id.* at 118a-119a.

In addition to the findings concerning the inadequacy of CIGNA's disclosures, the district court made a number of findings relevant to whether employees suffered "likely harm" as a result, as required by the Second Circuit's decision in *Burke v. Kodak Ret. Income Plan*, 336 F.3d 103 (2d Cir. 2003), *cert. denied*, 540 U.S. 1105 (2004). The district court found that CIGNA knew that employee protests at other companies like Deloitte & Touche had "resulted in partial or complete rollbacks of the proposed changes." *Id.* at 113a-114a; *see* JA 766a-767a & 874a-892a. Because "[t]he risk of an adverse employee reaction should the true magnitude of the reductions ... some participants would experience was real," Pet.App. 113a, CIGNA sought to "[q]uickly dispel perceptions of 'take away'." JA 813a, 846a, 872a. CIGNA's strategy "proved successful", Pet.App. 114a, with internal emails and memos recognizing that "we have avoided any significant negative reaction from employees" and that the "introduction of the plan did not set off any significant rumblings at CIGNA, and things remain quiet." JA 838a, 894a. The district court found that CIGNA's "attempts to lull its employees into thinking" that the conversion "would not result in a significant reduction in the

rate of benefit accrual" were successful. Pet.App. 201a.

The district court determined that "CIGNA's successful efforts to conceal the full effects of transition to Part B 'deprived [plaintiffs] of the opportunity to take timely action'" whether that action was "protesting at the time Part B was implemented, leaving CIGNA for another employer with a more favorable pension plan, or filing a lawsuit like this one. As Ms. Amara testified, had she been told during her rehire interview that she would not be earning additional retirement benefits during a wear away period, she could have 'negotiated for a higher salary,' 'looked and talked to other employers,' or stayed at her previous position." Pet.App. 137a.

CIGNA did not offer a single fact witness or any documentary evidence to show that any employees were aware of the effects of wear away or to counter the documentary evidence that CIGNA deliberately concealed the truth to avoid an employee backlash. Indeed, even after the trial, CIGNA declined the district court's invitation to identify anyone who might have known about the wear away effect. JA 303a-314a. The district court concluded that "CIGNA has not provided the Court with any evidence that even a single employee had actual knowledge from CIGNA of the undisclosed information regarding the transition to Part B." Pet.App. 166a.

In response to a suggestion from CIGNA that the "employees who received but did not read the misleading notices and disclosures should be considered not to have demonstrated likely harm," the district court observed that CIGNA "fails to

comment on the likelihood that any employee could even recall, much less prove, ten years after the fact, which publications (or sections of publications) she had read at the time of the transition." Pet.App. 167a-169a. The district court concluded that CIGNA's request to conduct further discovery on "harmless error" was based on "unsupported speculation about what thousands of depositions might reveal" and would be "time-consuming and almost certainly fruitless." *Id.* at 167a. The district court concluded that "CIGNA is seeking impermissibly to shift its burden of proof onto the class." *Id.* at 169a.

On appeal, CIGNA admitted that its disclosures were "totally inadequate." JA 383a. CIGNA nevertheless contended that it had established "harmless error" at trial on a class-wide basis by showing that it distributed "personal benefit statements" which, according to CIGNA, disclosed "the exact amount of each participant's opening account balance." JA 339a. At oral argument, CIGNA conceded that the personal benefit statements did not disclose "what the impact of the change is going to be." JA 387a-388a. The Second Circuit rejected CIGNA's contentions and affirmed the district court's judgment in an unpublished opinion.[4]

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[4] The Second Circuit simultaneously affirmed the district court's decision *not* to award any relief for two other disclosure violations that the district court found at trial, even though the district court expressed "considerable uncertainty" about those rulings and asked for guidance. Respondents' petition for certiorari on those rulings is pending under No. 09-784.

SUMMARY OF ARGUMENT

Based on the bench trial, the district court here found material conflicts between the SMM and SPDs that CIGNA distributed to its employees and the more technical formal plan documents that CIGNA maintained. CIGNA's summary descriptions promised that "each dollar's worth of credit is a dollar's worth of retirement benefits payable to you" and "your benefit will grow steadily throughout your career" while the terms of the formal plan documents actually led to periods of "wear-away" for almost all participants in which no additional retirement benefits were earned. Pet.App. 127a. The statements in the summaries were inconsistent with the formal plan document, which provided for a "greater of A or B system" and "structur[ed] the opening account balances under Part B" in a manner which "practically ensured" wear-aways. *Id.* at 121a-122a. The district court found that CIGNA produced the misleading summaries to avoid the risk of an employee "backlash" likely to result from full disclosure of the "takeaways." *Id.* at 113a-114a. CIGNA produced no evidence to counter this, and did not show that "even a single employee" knew about the wear-aways from any information provided by CIGNA. *Id.* at 166a.

ERISA §102(a) requires that plan administrators distribute SPDs and SMMs to employees covered by benefit plans to "reasonably apprise" them of their "rights and obligations." Both types of summaries must be accurate and be "written in a manner calculated to be understood by the average plan participant." *Id.* ERISA does *not* require employees to be provided the more formal and technical plan

documents that CIGNA describes as the "original, as it were," of the plan. Br. 14. ERISA §404(a)(1)(D) requires plan fiduciaries to adhere to the terms of the plan set forth in "the documents and instruments [plural] governing the plan insofar as such documents and instruments are consistent with the provisions of this title [title I of ERISA]." As this Court recognized in *Kennedy v. Plan Admin. for DuPont Sav. & Inv. Plan*, 129 S.Ct. 865, 877 (2009), SPDs are among the "documents and instruments" that govern the plan. Even before *Kennedy*, the courts of appeals—including the lone circuit (the Third Circuit) on which CIGNA relies—all held that SPDs and SMMs are among the "documents and instruments governing the plan" within the meaning of ERISA.

The courts of appeals have likewise unanimously held that that when a description of benefits in SPDs and SMMs conflicts with the more technical plan documents that participants generally do not see, the summary description must control. Undisclosed terms are also ineffective or unenforceable. These rules make sense because ERISA does not allow secret restrictions or benefit reductions. "To allow the Plan to contain different terms that supersede the terms of the [summary] would defeat the purpose of providing the employees with summaries." *Heidgerd v. Olin Corp.*, 906 F.2d 903, 907-08 (2d Cir. 1990). "Any burden of uncertainty created by careless or inaccurate drafting of the summary must be placed on those who do the drafting and who are most able to bear that burden, and not on the individual employee." *Hansen v. Continental Ins. Co.*, 940 F.2d 971, 982 (5th Cir. 1991).

As CIGNA recognizes (Br. 32), ERISA reflects a number of "legislative negotiations" and compromises. But the detrimental reliance requirement that CIGNA now seeks is *not* one of them. Instead, like most modern disclosure laws, ERISA uses an objective "average" plan participant to establish "a simple requirement that will not mire plan administrators and courts in fact-specific inquiries." *McDowell v. Krawchison*, 125 F.3d 954, 961 (6th Cir. 1997). Objective standards like this "avoid[] the uncertainties and unfair discrepancies that can plague a judicial effort to determine a plaintiff's unusual subjective feelings." *Burlington Northern & Santa Fe Ry. v. White*, 548 U.S. 53, 68 (2006).

The duty to disclose complete and accurate information in trust law also supports respondents' position that a fiduciary cannot mislead beneficiaries and then place the burden on each beneficiary to prove how things would have been different with disclosure. *See Res. (Sec.) of Trusts*, §173, cmt. d; Bogert, *Trusts* (6th ed.), §96. When a fiduciary breaches the duty to disclose, "harmless error" can be used as a defense, but trust law has never supported a rule that allows a fiduciary to mislead beneficiaries and then "prevail without coming forward with *any* evidence at all." Suppl. Pet. Br. at 9 (emph. orig.).

CIGNA's refrain that allowing recovery without a showing of detrimental reliance will lead to "virtual-strict liability" (Br. 23, 25, 35) does not hold up. It is not "strict liability" to hold an employer who negligently or intentionally misleads its employees about retirement benefits to the benefits that were promised—this merely assures that promises are

kept and is one of the central reasons why ERISA was enacted. Moreover, the material conflict and likely prejudice/harmless error standards used in the Second, Third, Fifth and Sixth Circuits have clearly not resulted in "virtual-strict-liability" in those circuits.

The heart of CIGNA's argument is that the promises it made in the SMM and SPDs should not be enforceable because the summary descriptions are "no more a 'plan' than a syllabus to one of this Court's opinions is itself an opinion." Br. 15. In view of the statutory obligations and the "plan documents rule" in *Kennedy*, this contention is flatly wrong—as is CIGNA's related argument that its representations to its employees about their benefits were "gratuitous." Br. 12, 21, 32.

CIGNA's argument that a subjective detrimental reliance requirement should nonetheless be implied because ERISA §102 is in some respect like a common-law tort action for misrepresentation also fails. Neither the disclosure rules in ERISA §102 nor the causes of action in ERISA §502(a) contain any language compatible with the detrimental reliance requirement that CIGNA seeks. Without a textual basis, detrimental reliance cannot be imposed. As this Court stated in *Bridge v. Phoenix Bond & Indemnity*, 553 U.S. 639, 648 (2008):

> If petitioners' proposed requirement of first-party reliance seems to come out of nowhere, there is a reason. Nothing on the face of the relevant statutory provisions imposes such a requirement.

For similar reasons, CIGNA's policy arguments in support of implying a detrimental reliance requirement lack merit. Congress enacted ERISA's disclosure requirements to prevent what happened here – distributing summary descriptions that assure employees that their pension benefits are being enhanced when the "cold legal phrasing" in a formal plan document says otherwise. Congress did not want the courts to have to strike Faustian bargains between deceptive booklets and the maintenance or formation of plans. Finally, CIGNA's detrimental reliance proposal would not produce any "uniformity" in plan terms, but inefficient, expensive and protracted litigation in which the terms of plans would ultimately depend on subjective judicial assessments of credibility. This is exactly the kind of inconsistent, weak, and ineffective enforcement that Congress rejected in enacting ERISA.

ARGUMENT

I. PLAN PARTICIPANTS ARE ENTITLED TO THE BENEFITS CIGNA PROMISED IN THE PLAN SUMMARIES.

After nearly a decade of study, Congress enacted the Employee Retirement Income Security Act of 1974 ("ERISA") as a comprehensive response "to the issue of whether American working men and women shall receive private pension plan benefits which they have been led to believe would be theirs upon retirement from working lives." S. Rep. 93-127 at 1, 1974 U.S.C.C.A.N. 4838. "Employers are not required to provide pension benefits, but when they do, their plans must comply with ERISA, and the promises they make can in no way be considered mere gratuities." *Williams v. Rohm & Haas Pension*

Plan, 497 F.3d 710, 714 (7th Cir. 2007), *cert. denied*, 128 S.Ct. 1657 (2008). To address the "inequities that are visited upon plan participants" before ERISA, Congress established standards, including for "adequate communication to participants," to "which all private pension plans must conform if the private pension promise is to become real rather than illusory." H.Rep. 93-533 at 5, 10, 1974 U.S.C.C.A.N. 4639, 4643 & 4648.

A. CIGNA May Not Revisit the Unappealed Findings that It Materially Misled Its Employees About Benefit Reductions to Avoid an Employee "Backlash."

This case is unusual in the over 60 ERISA cases to have reached this Court in that there was a trial below (*Varity Corp. v. Howe* appears to be the only other such case). CIGNA did not appeal any of the district court's findings of fact, so it is settled that they may not be challenged. *See, e.g., L. P. Steuart & Bro., Inc. v. Bowles*, 322 U.S. 398, 406 (1944)).

CIGNA's brief is, however, riddled with assertions that continue to battle with the facts established by the district court. It is already established that CIGNA's disclosures to its employees about the periods of wear-away and reductions in future benefits were "downright misleading." Pet.App. 8a. And it is settled that CIGNA did this to avoid a "backlash" from employees about the reductions in their future retirement benefits. *Id.* at 114a. But CIGNA's brief nonetheless seeks to downgrade its "downright misleading" statements to the status of "stray comments" and "minor discrepancies," and it continues to describe CIGNA's summary descriptions as only "alleged[ly]"

or "purportedly" inconsistent with the formal plan documents. Br. 6, 8, 35-36.

Most seriously, CIGNA's brief does not mention the employee "backlash" that it sought to avoid but suggests that only "gratuitous promises" are involved. Br. 12, 21 n.4, 32. As CIGNA knows, retirement benefits are far too important of a part of employees' pay to suggest that representations that are statutorily-required to be accurate were "gratuitous."[5] In enacting the Welfare and Pension Plans Disclosure Act of 1958 ("WPPDA"), Congress recognized that "the employer's share of the cost of these plans or the benefits the employers provide are a form of compensation." S. Rep. 85-1440, 3, 1958 U.S.C.C.A.N. 4137, 4139. The Committee reports and legislative history of ERISA are also replete with descriptions of pensions as "deferred wages." *See, e.g.*, S. Rep. 93-127, 3, 1974 U.S.C.C.A.N. at 4839. Senator Javits, the chief sponsor and architect of the legislation, explained how employees exchange their work for a pension:

> [T]he private pension plan is a means for transferring earnings during the working years into income for a decent living in the older years. The worker 'works' for that pension the same way he 'works' for his wages or salary and when he does not get it or some reasonable portion of it, he is angry, frustrated, and ultimately convinced that he

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[5] *See, e.g., Daniel v. Int'l Broth. of Teamsters*, 561 F.2d 1223, 1244 (7th Cir. 1977), *rev'd on other grounds*, 439 U.S. 551 (1981) (citing statistics that retirement benefits are "second only to wages" as source of labor-management disagreements).

> has been robbed of a material recognition that was due him.

II ERISA Leg. Hist. (Committee Print) 1609. In both *Lockheed Corp. v. Spink*, 517 U.S. 882, 893-94 (1999), and *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 445 (1999), this Court recognized that "[a]mong the ... legitimate benefits that a plan sponsor may receive from the operation of a pension plan are attracting and retaining employees [and] paying deferred compensation."

Similarly, CIGNA's brief asserts that "thousands of plaintiffs...in all likelihood never read CIGNA's SPDs." Br. 25. But CIGNA introduced no such evidence below. In fact, a contemporaneous survey *taken by CIGNA*, which plaintiffs introduced, shows that a remarkable 92% of respondents "thoroughly" read the summaries. JA 895a. At trial, the named class representatives and other employees testified about reading the SMM or SPDs.[6]

CIGNA's brief also contains numerous references to a threat to the Plan's "actuarial soundness", "crippling class-wide liability," and "massive, unforeseen pension liabilities." Br. 35, 36, 38. But in defending its position that a $45 million bond was sufficient while this case was on appeal, CIGNA told the district court that "no evidence exists that CIGNA, a company with $1.115 billion in net income in 2007 would be unable to pay any additional

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[6] JA 149a-150a, 168a, 182a-183a, 203a-204a, 213a, 222a, 229a-230a.

required contributions to the Plan" resulting from the Court's Order. Record 295 at 3. [7]

Despite CIGNA's efforts to revisit the facts, the issue here is clearly *not* whether employees are entitled to obtain benefits on account of "gratuitous" promises or "stray comments" in summary descriptions. Instead, the issue is whether CIGNA can deliberately withhold information about circumstances that result in losses tantamount to significant pay cuts, make "downright misleading" representations denying the losses and still enforce the undisclosed technical document wording that was hidden from employees.

B. Under ERISA, SPDs Are Among the "Plan Documents" Governing the Plan.

ERISA's disclosure rules are designed to require employers to "arm plan participants with specific knowledge of their rights and remedies with respect to employee benefit plan" in order to protect themselves. *Board of Trustees of the CWA/ITU Negotiated Pension Plan v. Weinstein*, 107 F.3d 139, 143 (2d Cir. 1997). Congress felt that ERISA's predecessor legislation was "weak in its limited disclosure requirements and wholly lacking in substantive fiduciary standards." H. Rep. 93-533 at 4, 1974 U.S.C.C.A.N. 4639, 4642; S. Rep. 93-127 at 4, 1974 U.S.C.C.A.N. 4838, 4841. Prior to ERISA's enactment, the WPPDA had required plan descriptions and annual financial reports to be

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[7] In 2008, CIGNA recorded an $80 million charge to account for its "best estimate of the liabilities related to the court order." Online at: http://www.cigna.com/about_us/investor_relations/sec_filings/4Q2009/cigna10k20091231.pdf, at 166.

available for examination or provided on written request. P.L. 85-836, as amended by P.L. 87-420 (1962). But the WPPDA did not regulate the form or contents of employee booklets, such as requiring a comprehensive description of benefit rights or circumstances that can cause benefits to be lost. Senator Javits, ERISA's chief Senate sponsor, observed: "Many workers are led to believe they are covered by a good pension plan because of nicely phrased booklets and other assurances handed them by their employers. When the time comes for the payoff, they learn that the cold legal phrasing in pension contracts says otherwise." III ERISA Leg. Hist. 4750.

The reports of the House Education & Labor and the Senate Labor & Public Welfare Committees concluded identically:

> It is grossly unfair to hold an employee accountable for acts which disqualify him from benefits, if he had no knowledge of these acts, or if the conditions were stated in a misleading or incomprehensible manner in plan booklets. Subcommittee findings were abundant in establishing that an average plan participant, even where he has been furnished an explanation of his plan's provisions, often cannot comprehend them because of the technicalities and complexities of the language used.

H. Rep. 93-533 at 8, 1974 U.S.C.C.A.N. at 4646; S. Rep. 93-127 at 11, 1974 U.S.C.C.A.N. at 4847. The reports also found that when employees sought legal redress, "Courts strictly interpret the plan indenture and are reluctant to apply concepts of equitable relief

or to disregard technical document wording." H. Rep. 93-533 at 5, 1974 U.S.C.C.A.N. at 4643; S. Rep. 93-127 at 5, 1974 U.S.C.C.A.N. at 4842.

To address these problems, ERISA enacted minimum standards, including on "adequate communication to participants," "to which all private pension plans must conform if the private pension promise is to become real rather than illusory." H. Rep. 93-533, at 10, 1974 U.S.C.C.A.N. at 4648. Section 102 of ERISA sets forth the disclosure rules Congress enacted so employee booklets would no longer lead employees to believe they would receive generous pension benefits when formal plan documents contradict that promise. Section 102 provides that an SPD must be distributed to each participant that accurately discloses benefit rights and obligations under the plan, including circumstances that cause losses of benefits, and is "written in a manner calculated to be understood by the average plan participant." 29 U.S.C. §1022 (a) and (b). Section 102(a) also provides that an SMM must be distributed if there is a material change to the benefit provisions or the circumstances that cause losses. 29 U.S.C. §1022(a).

The regulations issued by the Labor Department to govern SPDs provide that their format "must not have the effect [of] misleading, misinforming or failing to inform participants and beneficiaries. Any description of exception, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure or otherwise made to appear unimportant." 29 C.F.R. 2520.102-2(b). "[C]ircumstances which may result" in the loss or reduction of benefits that an average plan

participant "might otherwise reasonably expect the plan to provide" must be "clearly" identified, 29 C.F.R. 2520.102-3(l), and any change in those circumstances must be disclosed. 29 C.F.R. 2520.104b-3(a).[8]

ERISA requires the SPDs and SMMs to be distributed to every participant. ERISA §104(b)(1), 29 U.S.C. §1024(b)(1). Other documents or instruments governing the plan are available only on request. ERISA §104(b)(4). As a result, SPDs and SMMs are the "primary" means by which benefit rights and obligations are communicated. *Burstein v. Ret. Account Plan for Allegheny Health Educ. & Res. Fdn*, 334 F.3d 365, 379 (3d Cir. 2003) ("as Congress intended, the SPD is the primary document on which plan participants must rely"); *Layaou v. Xerox Corp.*, 238 F.3d 205, 211 (2d Cir. 2001) ("employees are entitled to rely on the SPDs as their primary source of information about their benefits"); *Pierce v. Security Trust Life Ins. Co.*, 979 F.2d 23, 27 (4th Cir. 1992) (the SPD is "the statutorily established means of informing participants of the terms of the plan and its benefits"); *Bergt v. Ret. Plan for Pilots Employed by Mark Air, Inc.*, 293 F.3d 1139, 1143 (9th Cir. 2002) ("SPD is the 'statutorily established means of informing participants of the terms of the plan and

[8] The preamble to the regulations states that "the SPD must not be slanted in a way that ... plays down the plan terms which may cause a participant to lose benefits....There must also be a description of any terms of a plan which could result in a participant losing benefits.... Lawsuits may be brought to remedy violations of the disclosure, fiduciary or antidiscrimination provisions of ERISA, and to obtain benefits that have been denied improperly." 42 Fed. Reg. 14266-14267 (3/15/77).

its benefits' and the employee's primary source of information regarding employment benefits").

As indicated, ERISA does *not* require employers to distribute the "lengthy and highly technical" documents containing all the details of the plan to participants. *Jenson v. Sipco, Inc.*, 38 F.3d 945, (8th Cir. 1994). The formal plan documents "are generally voluminous documents written in technical legal terms," CIGNA Br. 3, and are "not provided to employees as a matter of course, but must be either inspected on ... designated premises or requested in writing." *Burstein*, 334 F.3d at 379; 29 U.S.C. § 1024(b)(4) (plan documents other than SPDs and SMMs are only available "on request"). As a result, most employees and even senior executives never see the formal document. *Marolt v. Alliant Techsystems, Inc.*, 146 F.3d 617, 621 (8th Cir. 1998) (calling the formal document "a transactional document only lawyers will read").

Under what has come to be known as the "plan documents rule," *Kennedy v. DuPont*, 129 S.Ct. at 877, an SPD is one of "the documents or instruments governing the plan." Plan fiduciaries must discharge their duties in accordance with those documents and instruments "insofar as ... consistent with the provisions" of title I of ERISA, which includes the rules applicable to summary descriptions. ERISA §404(a)(1)(D), 29 U.S.C. §1104(a)(1)(D).

As this Court observed in *Kennedy*, the "plan documents rule" provides "a straightforward rule that lets employers establish a uniform administrative scheme, with a set of standard procedures to guide processing of claims and disbursement of benefits." 129 S.Ct. at 875. Even

before *Kennedy*, the courts of appeals had consistently held that summary descriptions are part of the plan documents. *See, e.g., Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1511 (10th Cir. 1999) ("SPDs are considered part of the ERISA plan documents").[9] State courts have similarly concluded that certificates of coverage that are statutorily "required to contain the contract essentials" should be considered part of the contract of insurance. Appleman, *Insurance Law & Practice* (1981), §46 at 156; *accord, Couch on Insurance 3d*, §8:21 & 8:23.

CIGNA argues that the "structure" of ERISA precludes the conclusion that SPDs are among the documents that set forth the plan. CIGNA maintains that because 29 U.S.C. §§1024(b)(2) and 1029(c) *separately* identify SPDs before referring to the "other instruments under which the plan was established or is operated," SPDs are not among those "instruments." Br. 15. This argument ignores the teachings of *Kennedy* and the courts of appeals that summary descriptions are part of the plan documents and obviously misreads the cited provisions, which are reasonably construed to include SPDs among the "instruments under which the plan ... is operated."

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[9] *See also Jensen v. SIPCO*, 38 F.3d 945, 949 (8th Cir. 1994); *Hughes v. 3M Retiree Med. Plan*, 281 F.3d 786, 790 (8th Cir. 2002) (SPDs "form part of the written documents required by ERISA"); *Ross v. Rail Car Am. Group Disability Income Plan*, 285 F.3d 735, 739 (8th Cir.), *cert. denied*, 537 U.S. 885 (2002) (the insurance "policy and the Summary Plan Description jointly constitute the Plan documents"); *Alday v. Container Corp. of Am.*, 906 F.2d 660, 665-666 (11th Cir. 1990), *cert. denied*, 498 U.S. 1026 (1991).

C. In Cases of Conflict Between an SPD and Underlying Plan Language, ERISA Requires the SPD to Control.

When "there is no conflicting language" between SPDs (and SMMs) and more detailed plan documents, the courts "read the SPD and [other] Plan documents together as [an] integrated whole." *Morrison v. Marsh & McLennan Cos.*, 439 F.3d 295, 301-02 (6th Cir. 2006); *accord Mers v. Marriott Int'l Group Accidental Death & Dismemberment Plan*, 144 F.3d 1014, 1023 (7th Cir. 1998), *cert. denied*, 525 U.S. 947 (1998); *Jensen v. SIPCO*, 38 F.3d at 952-53; *Wise v. El Paso Natural Gas Co.*, 986 F.2d 929, 939-940 (5th Cir. 1993).

Obviously, the question of what happens when an SPD and other underlying plan documents *cannot* be reconciled has also arisen. As indicated, every circuit other than the D.C. Circuit, which has not ruled, has held that when the description of benefits in SPDs and SMMs conflicts with more detailed plan documents that participants generally do not see, the summary descriptions control.[10] The Second Circuit's *Burke* decision explains that giving SPDs precedence

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[10] *See Bard v. Boston Shipping Ass'n*, 471 F.3d 229, 245 (1st Cir. 2006); *Heidgerd v. Olin Corp.*, 906 F.2d 903, 908 (2d Cir. 1990); *Burstein*, 334 F.3d at 378 and 381 (3d Cir. 2003); *Blackshear v. Reliance Std. Life Ins. Co.*, 509 F.3d 634, 644 (4th Cir. 2007); *Washington v. Murphy Oil USA, Inc.*, 497 F.3d at 457 (5th Cir. 2007); *Helwig v. Kelsey-Hayes Co.*, 93 F.3d 243, 249 (6th Cir. 1996), *cert. denied*, 519 U.S. 1059 (1997); *Spitz v. Tepfer*, 171 F.3d 443, 448 (7th Cir. 1999); *Halbach v. Great-West Life and Annuity Ins. Co.*, 561 F.3d 872, 877 (8th Cir. 2009); *Bergt*, 293 F.3d at 1143-45 (9th Cir. 2002); *Chiles*, 95 F.3d at 1515 (10th Cir. 1999); *McKnight v. Southern Life & Health Ins. Co.*, 758 F.2d 1566, 1570 (11th Cir. 1985).

"makes sense when it is recalled that the SPD 'will be an employee's primary source of information regarding employment benefits.'" 336 F.3d at 110 (quoting *Heidgerd*, 906 F.2d at 907-08). "The consequences of an inaccurate SPD must be placed on the employer. The individual employee is powerless to affect the drafting and less equipped to absorb the financial hardship of the employer's errors." 336 F.3d at 113. As the Second Circuit earlier explained in *Heidgerd*, "[t]o allow the Plan to contain different terms that supersede the terms of the [summary] would defeat the purpose of providing the employees with summaries." 906 F.2d at 907-08.

In *Hansen v. Continental Ins. Co.*, 940 F.2d at 981-82, the Fifth Circuit agreed that "[a]ny other rule would be, as the Congress recognized, grossly unfair to employees and would undermine ERISA's requirement of an accurate and comprehensive summary." Indeed, if statements in a plan summary were not binding, "the summary would not need to be accurate or comprehensive–if there were an ambiguity in the summary or an inaccuracy that put the summary in conflict with the policy, that ambiguity or inaccuracy would be cured by the policy itself." *Id.*; *see also Washington v. Murphy Oil*, 497 F.3d 453, 457 (5th Cir. 2007) (quoting *Hansen*); *Edwards v. State Farm Mut. Auto. Ins. Co.*, 851 F.2d 134, 137 (6th Cir. 1988) ("Congress has promulgated clear directives prohibiting misleading summary descriptions. This court elects not to undermine the legislative command"). The Third Circuit's *Burstein* decision carefully reviews all of these cases, except *Washington* which was decided later, and concludes that allowing the "summary plan description [to] ...

control" is "faithful" to "Congress's desire that the SPD be transparent, accurate, and comprehensive." 334 F.3d at 378.

CIGNA nonetheless asserts that *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 79 (1995), stands for the proposition that "an SPD may not amend a plan unless the plan's amendment procedures so permit." Br. 11. But statements and omissions in SPDs are not "amendments" to the plan; instead, SPDs are among the documents that *govern* the plan because of the disclosure requirements in ERISA §102 and the fiduciary duties in ERISA §404(a)(1)(D). Indeed, *Curtiss-Wright* recognizes that ERISA's amendment procedure provision is "not part" of the "disclosure requirements", which serve distinct purposes. 514 U.S. at 83-84. None of the eleven circuits that has held employers to the promises made in their SPDs has viewed *Curtiss-Wright* as an impediment to protecting employees from the consequences of inadequate disclosures in SPDs. Instead, *Curtiss-Wright* addresses the separate requirements for determining whether an "unfavorable" amendment has been validly adopted.[11]

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[11] In *Curtiss-Wright*, the director of benefits and labor counsel sought to make the terms of the plan "unfavorable" by issuing an SPD that provided for "termination of health care benefits" in specific circumstances. 514 U.S. at 75-76 and 84. This Court remanded for a "fact-intensive" determination of whether the unfavorable terms were adopted in conformity with the "amendment procedure provision" in ERISA §402(b)(3). *Id.* at 82, 85.

D. The Determination of Whether an SPD Conflicts with the Terms of a Formal Plan Document Is an Objective One.

When an inconsistency is alleged between a formal plan document and a summary description that ERISA regulates, the district court must evaluate the statements and omissions in the summary description in light of the understanding and expectations of an "average plan participant." This is an objective standard. *See Wilson v. Southwestern Bell Tel.*, 55 F.3d 399, 407 (8th Cir. 1995) (whether SPD is calculated to be understood by the "average plan participant" "appears to be an objective standard"); *accord Arnold v. Arrow Transp. Co.*, 926 F.2d 782, 785 (9th Cir. 1991) (whether the SPD's descriptions "satisfy ERISA is a legal question"). An average or "reasonable" person standard "look[s] to set some objective or universal (as opposed to 'subjective,' or individualized) standard of conduct." Lisa J. Bernt, "Finding the Right Jobs for the Reasonable Person in Employment Law," 77 *UMKC L. Rev.* 1 (Fall 2008).

To enforce this standard, a district judge must determine what a reasonable plan participant would understand to have been promised. That question does not depend on the subjective understandings of particular participants. Accordingly, an employer cannot withstand relief by demanding that each participant testify as to his or her subjective understandings and, conversely, a participant cannot obtain relief based on his or her "confusion" or individual understanding. *See, e.g., Fuller v. FMC Corp.*, 4 F.3d 255, 261 (4th Cir. 1993), *cert. denied*, 510 U.S. 1115 (1994).

The "average" participant standard is also used in:

- ERISA §204(h)(2), as amended by EGTRRA, and Treas. Reg. 54.4980F-1, Q&A-11;
- The COBRA regulations at 29 CFR 2590.606-1(c)[12]; and
- The Older Worker Benefit Protection Act ("OWBPA") at 29 U.S.C. 626(f)(1) and 29 CFR 1625.22(b).

Each of these has been interpreted to establish an objective standard and none has been construed to depend on subjective proof. In *McDowell v. Krawchison*, 125 F.3d at 961, the Sixth Circuit ruled that the "clear language of the [COBRA] statute ... establishes a simple requirement that will not mire plan administrators and courts in fact-specific inquiries."[13] The OWBPA standard has been applied in *Syverson v. IBM*, 472 F.3d 1072, 1083-86 (9th Cir. 2007), and *Thomforde v. IBM*, 406 F.3d 500, 503-505 (8th Cir. 2005), without hearings into individual understandings or reliance. Instead, the courts look at whether the language of a release is "confusing," *Syverson*, 472 F.3d at 1096, or lacks "clarity," *Thomforde*, 406 F.3d at 505, and invalidate the

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[12] ERISA §204(h) and COBRA are enforced through the same ERISA §502(a) causes of action applicable to this case.

[13] *Accord Smith v. Rogers Galvanizing Co.*, 128 F.3d 1380, 1383-85 (10th Cir. 1997) (affirming award of retroactive insurance coverage under COBRA when a "notice was inadequate").

release if it does not meet the statutory standard.[14] Objective, reasonable person standards are also used under other communication-related statutes, again without requiring subjective, individual testimony to establish liability.[15]

Here, the district court's "well-reasoned and scholarly" opinion (Pet.App. 4a) correctly concludes that CIGNA's December 1997 SMM and its two SPDs from October 1998 and September 1999 constituted "affirmatively and materially misleading" summaries of the new plan document. Pet.App. 114a. The district court found that although "CIGNA was aware that its Plan could result in wear away," Pet.App. 29a, the SPD misled participants in its ERISA §204(h) notice, SMM, and SPD by describing the cash balance plan as an "enhancement" with no "cost savings" for CIGNA and no disclosures about periods where benefits would not be growing. Pet.App. 31a, 34a. CIGNA told

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[14] See also *Jensen v. Solvay Chemicals Inc.*, __ F.3d __, 2010 WL 3472945 (10th Cir. 9/7/10) (applying average plan participant standard in ERISA §204(h) based on the court's determinations about the understandability of the disclosures).

[15] *See, e.g., Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1089 and 1093 (9th Cir. 2010) ("objective reasonable person" standard for liability under Hawaii's consumer protection act negates individual reliance issues); *Rendler v. Corus Bank, N.A.*, 272 F.3d 992, 999 (7th Cir. 2001) (adequacy of Truth in Lending Act disclosures "can only be judged by an objective reasonable person standard"); *Savino v. Computer Credit*, 164 F.3d 81, 85 (2d Cir. 1998) ("objective standard...measured by the least sophisticated consumer" under Fair Debt Collection Practices Act); *Ryder Truck Lines, Inc. v. Brennan*, 497 F.2d 230, 233 (5th Cir. 1974) ("reasonable person" standard under OSHA "is an external and objective test").

employees that "you will see the growth in your total retirement benefits from CIGNA every year" and that "each dollar's worth of credits is a dollar of retirement benefits payable to you" even though there were periods of "wear-away" where participants were not earning additional benefits." *Id.* at 37a, 40a. These statements were inconsistent with the formal plan document, which provided for a "greater of A or B system" and "structur[ed] the opening account balances under Part B" "which practically ensured that wear away would occur." *Id.* at 121a-122a.

E. Participants Are Entitled to Relief If There Is a Material Conflict; If a Showing of Prejudice Is Required, It Should Be Possible Prejudice to an Average Plan Participant.

Because the text of ERISA and the DOL regulations establishes an objective standard and imposes no subjective reliance requirement, there is no statutory basis to impose one. The appropriate test is whether the conflict is "material." *Burstein*, 334 F.3d at 379 & 380 (conflict between SPD and Plan Documents was "not only stark" but "unquestionably material"); *Washington v. Murphy Oil*, 497 F.3d at 459. Even if a showing of possible prejudice could be implied from the statute when there is no material conflict, the proper standard is possible prejudice to an "average plan participant," not actual prejudice to each individual in the plan.

CIGNA misleadingly asserts that "the majority of courts of appeals to consider the question have rejected the 'likely harm' approach and instead required a showing of detrimental reliance." Br. 25.

As shown by CIGNA's own quote from *Govoni v. Bricklayers, Masons & Plasterers Union*, 732 F.2d 250, 252 (1st Cir. 1984), those circuits actually require "some significant reliance upon, *or possible prejudice flowing from*, the faulty plan description." Br. 26 (quoting *Govoni*).

Contrary to CIGNA's representations, there is no discernable difference on their face between the "possible prejudice" standard in *Govoni* and the "likely harm" or "material conflict" standard. As stated in *Burke*, the problem with the reliance-or-possible-prejudice standard has been that: (1) "possible prejudice" has been applied with "varying degrees of stringency," and (2) detrimental reliance "imposes an insurmountable hardship on many plaintiffs." 336 F.3d 113. [16]

The circuits that have adopted a material conflict or likely prejudice standard have explained the statutory basis for their position. In *Burke*, the decision that CIGNA principally challenges, the Second Circuit held that:

> The [ERISA] statute and the DOL regulations place the burden on employers to draft an SPD that is accurate, comprehensible, and clear regarding restrictions on eligibility for benefits.... The consequences of an inaccurate SPD must be placed on the employer....

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[16] The Eleventh Circuit appears to have transformed the *Govoni* standard into a test for detrimental reliance alone in two decisions: *Heffner v. Blue Cross & Blue Shield of Ala., Inc.*, 443 F.3d 1330, 1340-46 (11th Cir. 2006); *Branch*, 955 F.2d at 1579. However, an unpublished ruling indicates that "what type of reliance is required" is not settled. *Kamlet v. Hartford Life and Acc. Life Ins. Co.*, 144 Fed.Appx. 755, 757 (11th Cir. 2005).

336 F.3d at 112-113. *Burke* rejected detrimental reliance because it imposes an "insurmountable burden on many [participants]" that "hardly advances the Congressional purpose of protecting the beneficiaries of ERISA plans by insuring that employees are fully and accurately apprised of their rights." *Id.*

In *Burstein*, the Third Circuit determined that ERISA §102 "expresses Congress' desire that the SPD be transparent, accurate, and comprehensive." 334 F.3d at 378. *Burstein* concluded that "[b]ased upon our view of Congress's intent, an SPD furnishes the plan's terms to the extent that it conflicts with (and thus supersedes) the language of a formal plan document." *Id.* at 381-82. "[J]ust as a court's enforcement of a contract generally does not require proof that the parties to the contract actually read, and therefore relied upon, the particular terms of the contract, we are persuaded that enforcement of an SPD's terms under a claim for plan benefits *does not* require a showing of reliance." *Id.* at 381 (emph. orig.); see also *Edwards*, 851 F.2d at 137 ("Congress has promulgated clear directives prohibiting misleading summary descriptions. This court elects not to undermine the legislative command"); *Washington*, 497 F.3d at 457 ("if there is a conflict between the summary plan description and the terms of the policy, the summary plan description shall govern. Any other rule would be, as the Congress recognized, grossly unfair to employees and would undermine ERISA's requirement of an accurate and comprehensive summary").

The circuits that have adopted the reliance-or-possible-prejudice standard have, by contrast, not

identified the statutory or regulatory basis for those requirements and have not addressed how those requirements can be implied if they are not based on statutory text. See, e.g., *Branch*, 955 F.2d at 1578-80. CIGNA's brief is the same. It never points to any statutory language as the basis for requiring an individualized showing of detrimental reliance. See Br. 24-26.

Respondents respectfully submit that in the event of a conflict between an SPD and other documents and instruments, a district court's determination does not need to go beyond finding a material conflict that would violate ERISA §102 if the undisclosed terms were enforced. As applied by the court below, the Second Circuit's "likely harm" rule is very similar to finding materiality, generally defined as information "of such a nature that knowledge of [it] would affect a person's decision making process." *Black's Law Dictionary* (7th ed.). However, as *Burke* recognizes and the case law demonstrates, a possible prejudice standard is "amorphous" enough that a different court could apply it in a manner that is similar to requiring "detrimental reliance." *Burke*, 336 F.3d at 113 (prejudice standard has been applied "with varying degrees of stringency"). Many of the cases under the "possible prejudice" standard reach results that are only compatible with detrimental reliance.[17] In most of these instances, this results

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[17] *See, e.g.*, *Greeley v. Fairview Health Servs.*, 479 F.3d 612, 615 (8th Cir. 2007) (disability benefits were available until age 67 under the SPD but only until age 65 under plan document; the court found no reliance or prejudice because Greeley "had no choice but to go on disability because of the condition of his lungs" and "offered no evidence" other than "financial loss"

from looking at possible prejudice only to the individual (effectively requiring "actual prejudice"), rather than look at possible prejudice to the average participants to whom the disclosures were directed. As the district court observed here, applying the "possible prejudice" or "likely harm" rule to require each individual plaintiff to show what he would have done differently if the notices were accurate would "essentially re-impose the detrimental reliance standard." Pet.App. 135a.[18]

F. Respondents Properly Sued Under ERISA's Section 502(a)(1)(B) "to Recover Benefits Due ... Under the Terms of [the] Plan."

CIGNA devotes practically half of its argument to claiming that because respondents rely on representations that CIGNA made in summary descriptions, respondents' claims are not "under the terms of [their] plan" and are not cognizable under Section 502(a)(1)(B) but only under Section 502(a)(3). Br. 13-23. CIGNA did *not* petition for certiorari on this ground and it took a different position below, conceding that plaintiffs should be able to obtain

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"that he changed course of action or otherwise relied on the faulty SPD").

[18] Respondents submit that if an analysis of likely or possible prejudice has a place in actions over inadequate SPDs, it should be in cases in which there is not a material conflict, but the SPD violates ERISA §102 by failing to be written in a manner calculated to be understood by the average plan participant.

"their benefits without the undisclosed provision" on "wear-away" under ERISA §502(a)(1)(B).[19]

Congress sought to provide "appropriate remedies, sanctions, and ready access to the Federal courts" under ERISA, 29 U.S.C. §1001(b), including through ERISA §502(a)(1)(B). That Section provides that a "civil action may be brought" by a "participant or beneficiary" to "recover benefits due to him under the terms of his plan." As this Court recognized in *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 147-48 (1985), an ERISA §502(a)(1)(B) action is a contract enforcement action. In *Russell*, this Court denied "extra-contractual" damages recognizing the "repeatedly emphasized purpose [of ERISA] to protect contractually defined benefits" and describing a claim for benefits as an action to recover "contractually authorized benefits."

Here, the plaintiffs properly invoked both the contractual cause of action in ERISA §502(a)(1)(B) and the "catch-all" cause of action in ERISA §502(a)(3), *Varity Corp. v. Howe*, 516 U.S. 489, 502 (1996), seeking relief under the latter only if it was unavailable under §502(a)(1)(B). Pet.App. 171a-172a. The district court found that because

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[19] This issue was not in the Question Presented. See Sup. Ct. R. 24.1(a) ("brief may not raise additional questions or change the substance of the questions already presented"). Below, CIGNA argued that Plaintiffs could have obtained "their benefits without the undisclosed provision" on "wear-away" under ERISA §502(a)(1)(B) if they had sued both the Plan and the Plan Administrator (an individual employee named Stewart Beltz). Record 276 at 12-14 ("[t]o the extent Plaintiffs now seek under Section 502(a)(3) a recalculation of their benefits without wearaway, the same relief would have been available had they sued the Plan Administrator under Section 502(a)(1)(B)").

"Plaintiffs may recover benefits from the CIGNA Plan (as opposed to CIGNA itself) under § 502(a)(1)(B)", it "did not need to consider" whether relief "would also be available under §502(a)(3)." Pet.App. 179a, 182a.

CIGNA's argument that the district court was not authorized to award plaintiffs their benefits under §502(a)(1)(B) without the undisclosed provision on wear-away is, as stated above, a new position that is based on a mistaken view that SPDs are *not* "documents or instruments governing the plan." As discussed above, *Kennedy v. DuPont* and all of the circuits that have ruled on this issue have held that SPDs are among the "documents and instruments governing the plan." Under the "plan documents rule," fiduciaries must act in accordance with the SPD both because it is part of the documents or instruments governing the plan and to act "consistent[ly] with the provisions" of title I. Under ERISA §§404(a)(1)(D) and 502(a)(1)(B), participants are entitled to obtain their benefits under the terms of the plan without the undisclosed provision on wear-away.

CIGNA's argument that Section 502(a)(1)(B) excludes any consideration of the summary descriptions rests primarily on *Gridley v. Cleveland Pneumatic Co.*, 924 F.2d 1310 (3d Cir. 1991) (Alito, J.). *Gridley* stated that an "SPD is not a 'plan' within the meaning of Section 502(a)(1)(B)." 924 F.2d at 1316. However, *Gridley* devoted only one paragraph to this issue because the court had found—in a thorough analysis, *id.* at 1315-18—that the "overview brochure" on which the plaintiff claimed benefits was not an SPD. In *Burstein*, the Third

Circuit pointed out that the language upon which CIGNA now relies is "dictum," and "join[ed] with the other Courts of Appeals that have considered this issue" to "hold that, where a summary plan description conflicts with the plan language, it is the summary plan description that will control." 334 F.3d at 377-78. The Third Circuit emphasized that "[t]he SPD is the document to which the lay employee is likely to refer in obtaining information about the plan," and that more "official" plan documents are not supplied to employees and are often inaccessible. *Id.* at 379.

CIGNA's new argument on ERISA §502(a)(1)(B) is also at odds with circuit precedents recognizing that "the terms of the plan" do not include unenforceable or legally ineffective terms. Not everything an employer, or its counsel, writes in a legalistic plan document is an enforceable term. In *Page v. PBGC*, 968 F.2d 1310, 1315-16 (D.C. Cir. 1992), then-Judge Ginsburg rejected the Pension Benefit Guaranty Corporation's assertion that Congress "must have meant to guarantee only benefits vested according to the express provisions of a plan, not those attributable to the provisions of ERISA" when it referred to "the terms of the plan" in ERISA §4022(a). *Page* recognized that ERISA §502(a)(3) refers to both "the terms of the plan" and "any provisions of this title" and held this "allows plan participants to enforce against employers *both* their obligations under Title I and any more generous terms in a particular plan." 968 F.2d at 1315 (emph. orig.).

More recently, in *West v. AK Steel Ret. Accum. Plan*, 484 F.3d 395, 405 (6th Cir. 2007), *cert. denied*,

129 S.Ct. 895 (2009), the Sixth Circuit held that "Although AK Steel has a point that 502(a)(1)(B) offers redress only for the recovery of benefits ... under the terms of the Plan, those terms must nevertheless comply with ERISA."[20] *See also May Dept. Stores v. Fed. Ins. Co.*, 305 F.3d 597, 601-2 (7th Cir. 2002) (Posner, J.) ("like many other contracts, pension plans governed by ERISA contain provisions implied by law"); *Frommert v. Conkright*, 433 F.3d 254, 270 (2d Cir. 2006) ("recalculation" of benefits "falls comfortably within the scope of §502(a)(1)(B)"). *Accord Central Laborers v. Heinz*, 541 U.S. 739, 750 (2004) (ERISA's nonforfeitability rule "adds a mandatory term to all retirement packages that a company may offer"); *Unum Life Ins. v. Ward*, 526 U.S. 358, 374 (1999) (state notice-prejudice law "effectively creates a mandatory contract term").

Against this backdrop, CIGNA's effort to analogize an SPD to the syllabus of one of this Court's decisions rings especially hollow. This Court does not distribute syllabi to every member of the public while retaining the full opinions for production only on written request. Nor are there legal requirements that syllabi be comprehensive or accurate, or even published at all.

By contrast, in enacting ERISA Congress found that employee booklets were often inaccurate and misleading and that the more formal plan documents

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[20] The Solicitor General's invitation brief on AK Steel's petition recommended denial on the ground that "ERISA specifies that plan terms are operative only to the extent that they are consistent with the statutory provisions, 29 U.S.C. 1104(a)(1)(D), and the requirements of ERISA are therefore incorporated into ERISA plans." Br. in No. 07-663 at 13-14.

were incomprehensible to participants "because of the technicalities and complexities of the language used." H. Rep. 93-533, at 11, 1974 U.S.C.C.A.N. at 4646; S. Rep. 93-127 at 8, 1974 U.S.C.C.A.N. at 4847. To cure this, Congress mandated the distribution of SPDs understandable to the average plan participant. For the law to achieve its purposes, the statements in an SPD must control when there is a material conflict with an underlying plan document. *Burstein*, 334 F.3d at 379 & 380; *Washington*, 497 F.3d at 459. Here, the plaintiffs should be able to obtain their benefits without the undisclosed provision on "wear-away" under ERISA §502(a)(1)(B).

G. ERISA's Duty to Disclose Is Consistent with Contract and Trust Law.

Trust law and contract law are consistent with the effect that ERISA's duty to disclose has on the terms of the plan that may be enforced under Section 502(a)(1)(B) and the "plan documents rule." Under contract law, laws that exist at the time a contract is made "enter into and form a part of [the contract], as fully as if they had been expressly referred to or incorporated in its terms." *Norfolk & W. Ry.* v. *American Train Dispatchers Ass'n*, 499 U.S. 117, 130 (1991) (quoting *Farmers & Merchs. Bank of Monroe v. Fed. Reserve Bank of Richmond*, 262 U.S. 649, 660 (1923)); *accord*, *2 Tudor City Place Assoc. v. 2 Tudor City Tenants Corp.*, 924 F.2d 1247, 1254 (2d Cir. 1991). Under trust law, "a trustee is not under a duty to the beneficiary to comply with a term of the trust which is illegal." *Res. (Sec.) of Trusts* §166; *id.* at §62 ("A trust or a provision in the terms of the trust is

invalid if the enforcement of the trust or provision would be against public policy").

Despite CIGNA's assertion that trust law "adds little here," Br. 27, the duty to disclose in trust law clearly counsels *against* the implication of a detrimental reliance requirement when there is a breach of a duty to disclose. As Judge Friendly has observed, "Courts do not take kindly to arguments by fiduciaries who have breached their obligations that, if they had not done this, everything would have been the same." *In re Beck Ind., Inc.*, 605 F.2d 624, 636 (2d Cir. 1979). Section 173, cmt. d, of the *Restatement (Second) of Trusts* states that:

> In dealing with the beneficiary on the trustee's own account, [the trustee] is under a duty to communicate to the beneficiary all material facts in connection with the transaction which the trustee knows or should know.... Even if the trustee is not dealing with the beneficiary on the trustee's own account, he is under a duty to communicate to the beneficiary material facts affecting the interest of the beneficiary which he knows the beneficiary does not know and which the beneficiary needs to know for his protection in dealing with a third person with respect to his interest.

See also Res. (Third) of Trusts, §82 ("trustee has a duty ... to inform beneficiaries of significant changes in their beneficiary status" ... [and keep them] reasonably informed of changes ... particularly material information needed by beneficiaries for the protection of their interests"); Bogert, *The Law of Trusts & Trustees* (rev'd 2d ed.), §544 at 493-96. Contract law likewise recognizes "[a] person's non-

disclosure of a fact known to him is equivalent to an assertion that the fact does not exist...where the other person is entitled to know the fact because of a relation of trust and confidence between them." *Res. (Sec.) Contracts* §161.

As Professor Bogert has explained, a defense similar to the "harmless error" defense in *Burke* may be used when there is a breach of the duty to disclose, but that defense is strictly limited: "If the trustee is to uphold the transaction under attack, he must prove that the beneficiary was informed by the trustee of all the facts which would naturally influence the beneficiary to accept or reject the proposal, or that the beneficiary had knowledge of the relevant facts which he had obtained from other sources." Bogert, *Trusts* (6th ed.), §96 at 350.[21]

CIGNA cites Section 173 of the *Restatement Second of Trusts*, but concludes that there is "not a clear set of trust-law rules addressing the remedy for a trustee's failure to inform the beneficiary about the terms of the trust." Br. 27. CIGNA simply ignores an entire line of ERISA cases that have been decided

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[21] See also *id.* at 349; Bogert, *Law of Trusts & Trustees*, §544 at 473-79. Consistent with Bogert, when reliance is discussed in connection with a fiduciary duty to disclose, it is often presumed, subject to rebuttal. *See, e.g., Morris v. Wachovia Secs.*, 448 F.3d 268, 282 (4th Cir. 2006) (fiduciary relationship between Morris and Wachovia imposed a duty on Wachovia to disclose material information; when such a duty has "been breached" courts "dispense[]with a requirement of positive proof of reliance"); *Basile v. H & R Block, Inc.*, 729 A.2d 574, 584 (Pa. Super. 1999) (reliance is presumed where fiduciary duty is established); *Edmunds v. Valley Circle Estates*, 20 Cal. Rptr. 2d 701, 708 (Cal. App. 1993); *Thigpen v. Locke*, 363 S.W.2d 247, 252 (Tex. 1963).

under Section 173. In the leading case, *Eddy v. Colonial Life Ins. Co.*, 919 F.2d 747, 750 (D.C. Cir. 1990), the duty to disclose material information was based on Section 173. Because the participant died while the appeal was pending, detrimental reliance on an undisclosed conversion option would have been impossible to prove. In *Bixler v. Central Pa. Teamsters Health & Welfare Fund*, 12 F.3d 1292, 1300 (3d Cir. 1993), the Third Circuit drew on Section 173 and imposed no reliance requirement. A detrimental reliance requirement on the failure to disclose would again have been impossible because the participant died of a heart attack before suit was filed.[22]

In short, like ERISA §102, trust law requires complete and accurate communication of all material terms to beneficiaries. When that duty is breached, a fiduciary can defend by establishing harmless error. But the fiduciary cannot, as Judge Friendly explained, assert that "everything would have been

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[22] Other decisions that rely on Section 173 also focus on what participants "could have done" rather than requiring speculative testimony about what they "would have done." See *Kenseth v. Dean Health Plan, Inc.*, 610 F.3d 452, 481 (7th Cir. 2010) (Plaintiff "could have undergone the same surgery elsewhere for less money, postponed the surgery until she and her husband had saved the money to pay for the procedure, or pursued other treatments"); *Griggs v. E.I. DuPont De Nemours & Co.*, 237 F.3d 371, 382 (4th Cir. 2001) ("Armed with that information, Griggs could have made a more informed choice about the form of payment that he wished his TPS benefit to take or about whether he would even participate in the TPS program"); *Krohn v. Huron Mem. Hosp.*, 173 F.3d 542, 551 (6th Cir. 1999) (with disclosure of the longer-term disability benefits, Krohn "could weigh her options and make informed decisions").

the same" and thereby put the beneficiary to his or her proofs.

H. Neither the Material Conflict Standard Nor the Second Circuit's Likely Prejudice/Harmless Error Standard Establishes "Virtual-Strict-Liability."

CIGNA's refrain that permitting recovery without a showing of individual "detrimental reliance" will result in "virtual-strict liability," Br. 23, 25, 35, misapprehends the district court's findings below and ignores the exceptions to liability that the Second Circuit and others have recognized. As set forth above, the district court found that CIGNA foresaw the periods of wear-away and benefit reductions and intentionally failed to disclose them in the summary descriptions. Pet.App.104a-114a, 123a-128a. Requiring CIGNA to provide benefits without the undisclosed periods of wear-away is thus not "strict liability," it simply requires CIGNA to provide the benefits that its disclosures reasonably and foreseeably led participants to expect to receive.

The Second Circuit and other circuits have, moreover, already recognized five situations in which it is *not* appropriate to read statements or omissions in a summary plan description to override the terms of formal plan documents. Those situations include:

(1) Levels of detail not required to satisfy the ERISA §102 standards. *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 195-96 (2d Cir. 2007) (SPD was not required to disclose the size of actuarial reduction for "early payment" option); *Atwood v. Newmont Gold Co.*, 45 F.3d 1317, 1321-22 (9th Cir. 1995) (SPD need not detail specific

mechanics by which benefits may be lost so long as it discloses events or actions); *Stahl v. Tony's Bldg. Materials*, 875 F.2d 1404, 1408 (9th Cir. 1989) (SPD need only be specific enough to communicate risk of loss).

(2) Harmless errors, *e.g.*, when a participant has actual knowledge of the less favorable plan terms. In *Weinreb v. Hospital for Joint Diseases Orthopaedic Institute*, 404 F.3d 167, 171 (2d Cir. 2005); *Tocker v. Philip Morris*, 470 F.3d 481, 489 (2d Cir. 2006); and *Schad v. Stamford Health Sys.*, 2009 WL 4981271, *2, 2009 U.S. App. LEXIS 27939, *6 (2d Cir. Dec. 21, 2009), the defendants successfully rebutted "likely prejudice" with the "harmless error" defense.

(3) Idiosyncratic contingencies that were not foreseeable in preparing the summary description. *See Tocker*, 470 F.3d at 488; *Estate of Becker v. Eastman Kodak Co.*, 120 F.3d 5, 9 (2d Cir. 1997); *Lorenzen v. Emples. Ret. Plan of Sperry & Hutchinson Co.*, 896 F.2d 228, 236 (7th Cir. 1990).

(4) Inadequate disclosures that have been corrected on a timely basis. *Hooven v. Exxon Mobil Corp.*, 465 F.3d 566, 577-78 (3d Cir. 2006) (Exxon "distributed an errata notice, effectively amending the Initial SPD to make it specific and consistent with the Plan provision"); *Frommert*, 433 F.3d at 269 (denying relief to those rehired after 1998 SPD which explained "phantom" offset); *Pierce*, 979 F.2d at 30.

(5) Scrivener's errors shown by clear and convincing evidence. *Young v. Verizon's Bell Atlantic Cash Balance Plan*, 615 F.3d 808, 819 (7th Cir. 2010) (equitable reformation available if "clear and convincing evidence" of scrivener's error "that does

not reflect participants' reasonable expectations of benefits"); *IUE v. Murata Erie N. Am., Inc.*, 980 F.2d 889, 907 (3d Cir. 1992).

In short, under the sensible approaches developed by the courts of appeals, an employer is *not* held responsible for every inadvertent or incomplete statement in an SPD. Here, however, that was not the case: It was "predictable and known" that CIGNA's summaries would mislead employees and be harmful to them, but CIGNA chose to pursue that course of action to avoid an employee "backlash" and advance its own interests.

II. THE COURT SHOULD NOT IMPOSE A DETRIMENTAL RELIANCE REQUIREMENT THAT CONGRESS NEITHER ADOPTED NOR INTENDED.

In enacting ERISA, Congress found prior common law remedies inadequate. It adopted objective disclosure requirements and provided appropriate remedies and ready access to the Federal courts to prevent employers from doing what CIGNA did here. This Court should not impose a detrimental reliance requirement that Congress neither adopted nor intended. CIGNA's proposal would undermine Congress' and this Court's goal that benefit terms be disclosed and uniformly applied so employees receive the benefits for which they have worked.

A. CIGNA's Effort to Imply Detrimental Reliance Based on Analogies to Tort Law and Promissory Estoppel Is at Odds with *Bridge v. Phoenix Bond & Indemnity*.

Sweeping aside the "plan documents rule" and principles of contract and trust law, CIGNA proposes to imply a detrimental reliance standard because of

similarities between civil actions based on misleading SPDs and tort actions for misrepresentation. Br. 28. Thus, CIGNA would analogize its deliberate breach of a duty to disclose periods of wear-away tantamount to pay cuts to a stranger's representations about the condition of a product or to a body of law founded on "gratuitous" promises not supported by consideration. *Williston on Contracts* (4th ed.), §§8.1, 8.4., 8.5. Contrary to CIGNA's brief, the closest analogies to ERISA §102 are to contract law because of the consideration provided by the employees' labor and to the duty to disclose under trust law, which offers a harmless error defense but does not require detrimental reliance as part of the case-in-chief.

Even more critically, unlike Section 18 of the Securities Exchange Act of 1934, *codified* at 15 U.S.C. 78r and SEC Rule 10b-5, 17 C.F.R. 240.10b-5(b), which indisputably contain a "reliance" requirement for misleading statements, the ERISA §102 provisions on SPDs and SMMs and the DOL's regulations do not require reliance, nor do they contain any words from which reliance can fairly be implied. The legislative history indicates, moreover, that Congress sought to address the courts' "reluctan[ce]" before ERISA to "disregard technical document wording" in common-law actions, such as for misrepresentation or promissory estoppel.

In *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. at 659, this Court rejected the implication of a detrimental reliance requirement for a civil RICO action because of the similarities between statutory mail fraud and common-law fraud. *Bridge* holds that 18 U.S.C. §§1961-1968 does not require a plaintiff to

show first-party reliance on the defendant's alleged misrepresentation to establish a violation. The Court explained:

> If petitioners' proposed requirement of first-party reliance seems to come out of nowhere, there is a reason. Nothing on the face of the relevant statutory provisions imposes such a requirement.

553 U.S. at 648. *Bridge* also ruled that reliance could not come in through the "back door" as an element in establishing proximate cause of the injury:

> Reliance is not a general limitation of civil recovery in tort; it is a specialized condition that happens to have grown up with common law fraud.... That 'specialized condition,' whether characterized as an element of the claim or as a prerequisite to establishing proximate causation, simply has no place in a remedial scheme keyed to the commission of mail fraud, a statutory offense that is distinct from common-law fraud and that does not require proof of reliance.

Id. at 655-56 (citations omitted). Similarly, in *Lyng v. Payne*, 476 U.S. 926, 936 (1986), this Court "reject[ed] petitioners' suggestion that any remedy that can be analogized to an equitable estoppel is necessarily invalid...unless the plaintiff succeeds in proving all the elements of common-law estoppel."[23]

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[23] *Bridge* further rules that even for common-law fraud, Section 548A of the *Restatement (Second) of Torts* "provides only that the plaintiff's loss must be the foreseeable result of *someone's* reliance on the misrepresentation. It does not say that only

Even if the common law action of misrepresentation was more analogous than a contract offer or the trust law duty to disclose, *Bridge* and *Lyng* teach that the primary guide in interpreting statutes is not analogy but text and purpose. Following those precedents, this Court should not imply an individualized reliance requirement that neither Congress nor the Department of Labor intended. Here, the "average plan participant," "reasonably apprise," "might ... reasonably expect," and "material" modification standards used in ERISA and its regulations represent clear choices of objective standards. Legislative and regulatory compromises have already been made in defining those standards and the scope of the available relief. In particular, ERISA's remedies do not allow the consequential or punitive damages awarded in tort actions and ERISA preempts any state law actions to obtain such relief. Since Congress did not require a showing of detrimental reliance and made other considered decisions about the common law elements to incorporate in ERISA, it would not make sense to imply such a requirement in this "reticulated statute." *Russell*, 473 U.S. at 146.

"Lacking textual support" or any anchor for implication in ERISA's purposes, *Bridge*, 553 U.S. at 650, CIGNA turns to the authority of the federal courts to fashion "federal common law." Br. 26-32. But this Court has already held that the "scope of permissible judicial innovation is narrower in areas where other federal actors are engaged" and that

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those who rely on the misrepresentation can suffer a legally cognizable injury." *Id.* at 656 (emphasis in original).

federal common law must be consistent with the policy of the legislation. *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 831 (2003); *accord Bridge*, 553 U.S. at 659 (rejecting defendant's policy argument that RICO should be interpreted to require reliance "in order to avoid 'over-federalization'" of what traditionally were state-law claims). Here, CIGNA's proposal to require individual detrimental reliance hearings involves an area where the Department of Labor is engaged and a proposal that would clearly "undermine" the statutory objective. *Washington*, 497 F.3d at 457; *Edwards*, 851 F.2d at 137.

B. Requiring Individual Demonstrations of Detrimental Reliance Is Unrealistic and Would Undermine Consistent, Plan-wide Enforcement of ERISA's Disclosure Rules.

Permitting employers to make good on promises in summary plan descriptions only for those individual employees who are able to later prove that they read and detrimentally relied on particular passages clearly shifts the burden of inaccurate drafting of SPDs to participants and is a recipe for undermining uniform, plan-wide relief for violations of ERISA's disclosure rules. CIGNA's argument does, however, go to a core question before this Court: Among the competing standards in the circuit courts of appeals, which standard or standards provides a workable means to advance Congress' goals?

As the district court found here, an employer's self-interest is not always aligned with Congress' desire for accurate and understandable disclosures in SMMs and SPDs: Apart from the legality and the

consequences of a violation, "producing affirmatively and materially misleading" summaries may be an effective strategy "to avoid employee backlash," as it was here. Pet.App. 114a. Plainly, letting CIGNA and other employers know that they cannot succumb to the incentive to avoid an employee backlash by withholding information in violation of the law is critical to achieving Congress' objectives.

As a practical matter, the detrimental reliance standard that CIGNA proposes would "herald a return to the pre-ERISA benefits landscape" (CIGNA Br. 36) by offering nearly complete immunity for violating the law: A few extraordinary current or former employees may be able to clear all of CIGNA's hurdles and testify about when they read and how they specifically and detrimentally relied on inadequate disclosures. But this Court and courts of appeal, like the district court here, have repeatedly recognized that detrimental reliance in the form that CIGNA proposes imposes an unrealistic and unfeasible burden in cases involving nondisclosures to thousands of individuals. See, e.g., *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 382 n.5 (1970) ("Proof of actual reliance by thousands of individuals would, as the court acknowledged, not be feasible, ... and reliance on the *nondisclosure* of a fact is a particularly difficult matter to define or prove"); *Basic Inc. v. Levinson*, 485 U.S. 224, 245 (1988) ("[r]equiring a plaintiff to show a speculative state of facts, i.e., how he would have acted if omitted material information had been disclosed ..., or if the misrepresentation had not been made" would result in an "unnecessary unrealistic evidentiary burden"); *FTC v. Figgie Int'l*, 994 F.2d 595, 605 (9th Cir. 1993), *cert. denied*, 510 U.S. 1110 (1994) ("[r]equiring proof

of subjective reliance by each individual consumer would thwart effective prosecutions of large consumer redress actions and frustrate the statutory goals").

CIGNA's proposal to hold individual "credibility" hearings is also totally unworkable. If each of the 27,000 class members participated, individual hearings would consume *over 10 years* at a rate of 10 witnesses per day testifying before a Federal district judge (or a special master). Even if only 10% participated, the result would be 52 weeks of hearings, with tremendous expense and logistical burdens to have witnesses, including from out-of-state, lined up to testify one after the other.

Moreover, deceased persons, individuals with dementia and other disabilities, and individuals without the resources to travel to New Haven to testify would not have any chance to recover. Ultimately, relief would be limited to a few dozen extraordinary people in Connecticut with memories of reading written material over a decade ago who are adept at handling hypothetical questions (*e.g.*, if CIGNA had disclosed wear-aways to you twelve years ago, what exactly *would* you, as opposed to what *could* you, have done differently?). For the people who are able to clear all the hurdles that CIGNA would put up, there would be no consequential or punitive damages to compensate them or act as a deterrent for CIGNA or other employers against engaging in the same course of conduct. Paying 1%, 2%, or 5% of the participants who were harmed over a decade after the fact will not deter anything or build the standards of honest communication about benefits that Congress wanted.

CIGNA attempts to find a statutory hook for a proposed reading requirement in the language of ERISA §102 describing SPDs as intended to "apprise" participants of their rights under the plan. Br. 12 (citing 29 U.S.C. § 1022). But under ERISA, as in other areas of law involving disclosures, "[p]lan participants who have been provided with an SPD are charged with constructive knowledge of the contents of the document."[24] CIGNA simply ignores those precedents. In construing ERISA §102, moreover, CIGNA drops the word "reasonably" from the statutory language which, in pertinent part, provides that the SPD shall be "sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." There is no mandatory reading requirement in ERISA §102 or the regulations (nor is there a requirement that employees keep journals to recall what they read a decade earlier).

CIGNA's proposed reading requirement and its assertion that "thousands of plaintiffs ... in all

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[24] *Scharff v. Raytheon Co. Short-Term Disability Plan*, 581 F.3d 899, 908 (9th Cir. 2009), *cert. denied*, 130 S.Ct. 3508 (6/28/10) (citing Fifth, Sixth, Eighth, and Eleventh Circuit decisions).

A presumption of reading is common under disclosure laws, whether it favors the plaintiff or the defendant. *See, e.g., Cooper v. Auto Club Ass'n*, 751 N.W.2d 443, 451 (Mich. 2008) ("One is presumed to have read the terms of his or her insurance policy"); *Ackerman v. Wyeth Pharms.*, 526 F.3d 203, 213 (5th Cir. 2008) ("read and heed" presumption "excuses plaintiff from the necessity of making self-serving assertions that he would have followed adequate instructions ... and it assists plaintiffs in cases where the person injured has died and evidence of what he would have done is unavailable").

likelihood never read" the summaries is also remarkable for its audacity. A contemporaneous survey *conducted by CIGNA* showed that 92% of participants "thoroughly" read the summaries. JA 895a. Moreover, after listening to the witnesses testify about their memories of reading the summaries, the district court found that CIGNA's proposed requirement that each participant testify about how he or she read the inadequate SPDs over a decade "after the fact" was unrealistic. Pet.App. 169a. Although the 92% figure indicates that CIGNA's employees may be more literate than average, CIGNA's proposal would bar any recovery not only by persons whose memories are not like video recordings, but also recoveries by adults who do not read at a high school or college level but learn by talking to co-workers who review benefit descriptions. [25]

As *Burstein* stated, "just as a court's enforcement of a contract generally does not require proof that the parties to the contract actually read, and therefore relied upon, the particular terms of the contract ... enforcement of an SPD's terms under a claim for plan benefits *does not* require a showing of reliance." 334 F.3d at 381. Even the formation of contracts does

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[25] See *Manginaro v. Welfare Fund of Local 21*, 21 F.Supp.2d 284 (S.D.N.Y. 1998) (Manginaro could have learned about a limitation, if it were disclosed, "from his employer, his co-workers, or the union, even if he never read the SPD himself"); *Estate of Ritzer v. National Org. of Indus. Trade Unions Ins. Trust Fund*, 822 F. Supp. 951, 955 (E.D.N.Y. 1993) ("court could reasonably expect that had the Fund adequately explained the rule in its summary plan description Ritzer would have learned about the retroactive aspect of the rule from co-workers, even if he had not read the plan").

not require that the entire contract be read. *See Schoonejongen v. Curtiss-Wright Corp.*, 143 F.3d 120, 132 (3d Cir. 1998) (vice-president did not read benefit policies before authorizing amendment); *see also Res. (Sec.) Contracts*, §211, cmt. b.[26]

CIGNA's proposed requirement that each plaintiff prove individually how or she detrimentally relied, for example, how much he or she would have protested or asked for additional compensation if CIGNA had accurately described the plan's benefits, at bottom, calls for speculation. The courts have consistently recognized that testimony about what someone "would have done differently" with disclosure is speculation. *See, e.g., Basic, Inc.*, 485 U.S. at 245; *Washington v. Dept. of Transp.*, 8 F.3d 296, 300 (5th Cir. 1993) (testimony as to what plaintiff "*would have done* had he seen the warning label on the Shop Vac vacuum" excluded because not based on witness' perception but on "self-serving speculation," emp. orig.); *Kloepfer v. Honda Motor Co.*, 898 F.2d 1452, 1459 (10th Cir. 1990).

CIGNA's proposed testimony is not only speculative, but it ignores the harm to the employees as a group that was caused by CIGNA's misleading disclosures. Obviously, the employee "backlash" that CIGNA was avoiding with its misstatements was not a protest by every single CIGNA employee but a widespread reaction to the takeaways that would have resulted in reconsideration or other changes.

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[26] CIGNA shamelessly contends that by denying relief to those who do not testify or who lack a memory of having "actually read" an SPD twelve years ago, it will be "*empowering* employees to know and enforce their rights under their plans." Br. 37 (emph. added).

Here, the district court recognized that "likely harm" is harm to the plaintiff group as a whole: "CIGNA's successful efforts to conceal the full effects of the transition ... deprived plaintiffs of the opportunity to take timely action in response to the purported 'amendment.'" Pet.App. 137a.

In sum, it is not credible that CIGNA's proposed detrimental reliance standard would do no more than sweep aside "unwarranted" recoveries. Br. 38. Instead, it would sweep aside any recovery for tens of thousands of persons who were harmed by disclosures that CIGNA now concedes were "totally inadequate." JA 383a. Saying that all the participants who "truly relied" will be able to clear CIGNA's proposed evidentiary hurdles, Br. 37-38, is like saying that everyone who is telling the truth will be able to walk over hot coals.[27]

CIGNA's assertion that providing benefits without proof of detrimental reliance will result in the production of "needlessly prolix" and "impossible-to-decipher" SPDs (Br. 13, 41) appears to be a thinly veiled threat. As an initial matter, CIGNA makes it sound like the problem with its SPD was that it was not encyclopedic enough, rather than—as the district court found—that CIGNA affirmatively misled

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[27] CIGNA says that participants who "truly relied" are "regularly successful" under a detrimental reliance standard. Br. 39. But in the one reported decision that CIGNA cites, *Dodson v. Woodmen of the World*, 109 F.3d 436 (8th Cir. 1997), the Eighth Circuit actually held that the plaintiff was "prejudiced by the omission" of a time limit in the SPD because he read it and "could not 'get anything out of it.'" 109 F.3d at 439.

employees. As noted above, the circuit courts have not required levels of detail beyond what is required to be found in a summary description that complies with ERISA. If CIGNA is saying that unless it can mislead its employees in SPDs, it will discontinue or not form benefit plans, that is a threat that ERISA soundly rejects.

CONCLUSION

The Court should affirm the judgment of the court of appeals on the question presented by CIGNA.

Respectfully submitted,

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APPENDIX

ERISA §404(a)(1)(D), 29 U.S.C. §1104(a)(1)(D), provides:

§ 1104. Fiduciary duties

(a) Prudent man standard of care

(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter and subchapter III of this chapter.

29 C.F.R. 2520.102-2 provides:

§ 2520.102-2 Style and format of summary plan description.

(a) Method of presentation. The summary plan description shall be written in a manner calculated to be understood by the average plan participant and shall be sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan. In fulfilling these requirements, the plan administrator shall exercise considered judgment and discretion by taking into account such factors as the level of comprehension and education of typical participants in the plan and the complexity of the terms of the plan. Consideration of these factors will usually require the limitation or elimination of technical jargon and of long, complex sentences, the use of clarifying examples and illustrations, the use of clear cross references and a table of contents.

(b) General format. The format of the summary plan description must not have the effect to misleading, misinforming or failing to inform participants and beneficiaries. Any description of exception, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure or otherwise made to appear unimportant. Such exceptions, limitations, reductions, or restrictions of plan benefits shall be described or summarized in a manner not less prominent than the style, captions, printing type, and prominence used to describe or summarize plan benefits. The advantages and disadvantages of the plan shall be presented without either exaggerating the benefits or minimizing the limitations. The description or summary of

restrictive plan provisions need not be disclosed in the summary plan description in close conjunction with the description or summary of benefits, provided that adjacent to the benefit description the page on which the restrictions are described is noted.

(c) Foreign languages. In the case of either--

(1) A plan that covers fewer than 100 participants at the beginning of a plan year, and in which 25 percent or more of all plan participants are literate only in the same non-English language, or

(2) A plan which covers 100 or more participants at the beginning of the plan year, and in which the lesser of (i) 500 or more participants, or (ii) 10% or more of all plan participants are literate only in the same non-English language, so that a summary plan description in English would fail to inform these participants adequately of their rights and obligations under the plan, the plan administrator for such plan shall provide these participants with an English-language summary plan description which prominently displays a notice, in the non-English language common to these participants, offering them assistance. The assistance provided need not involve written materials, but shall be given in the non-English language common to these participants and shall be calculated to provide them with a reasonable opportunity to become informed as to their rights and obligations under the plan. The notice offering assistance contained in the summary plan description shall clearly set forth in the non-English language common to such participants offering them assistance. The assistance provided need not involve written materials, but shall be given in the non-English language common to these

participants and shall be calculated to provide them with a reasonable opportunity to become informed as to their rights and obligations under the plan. The notice offering assistance contained in the summary plan description shall clearly set forth in the non-English language common to such participants the procedures they must follow in order to obtain such assistance.

Example. Employer A maintains a pension plan which covers 1000 participants. At the beginning of a plan year five hundred of Employer A's covered employees are literate only in Spanish, 101 are literate only in Vietnamese, and the remaining 399 are literate in English. Each of the 1000 employees receives a summary plan description in English, containing an assistance notice in both Spanish and Vietnamese stating the following:

"This booklet contains a summary in English of your plan rights and benefits under Employer A Pension Plan. If you have difficulty understanding any part of this booklet, contact Mr. John Doe, the plan administrator, at his office in Room 123, 456 Main St., Anywhere City, State 20001. Office hours are from 8:30 A.M. to 5:00 P.M. Monday through Friday. You may also call the plan administrator's office at (202) 555-2345 for assistance."

29 C.F.R. 2520.102-3(l) provides:

§ 2520.102-3 Contents of summary plan description.

Section 102 of the Act specifies information that must be included in the summary plan description. The summary plan description must accurately reflect the contents of the plans as of the date not earlier than 120 days prior to the date such summary plan description is disclosed. The following information shall be included in the summary plan description of both employee welfare benefit plans and employee pension benefit plans, except as stated otherwise in paragraphs (j) through (n):

* * *

(l) For both pension and welfare benefit plans, a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture, suspension, offset, reduction, or recovery (e.g., by exercise of subrogation or reimbursement rights) of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits required by paragraphs (j) and (k) of this section. In addition to other required information, plans must include a summary of any plan provisions governing the authority of the plan sponsors or others to terminate the plan or amend or eliminate benefits under the plan and the circumstances, if any, under which the plan may be terminated or benefits may be amended or eliminated; a summary of any plan provisions governing the benefits, rights and obligations of participants and beneficiaries under the plan on

termination of the plan or amendment or elimination of benefits under the plan, including, in the case of an employee pension benefit plan, a summary of any provisions relating to the accrual and the vesting of pension benefits under the plan upon termination; and a summary of any plan provisions governing the allocation and disposition of assets of the plan upon termination. Plans also shall include a summary of any provisions that may result in the imposition of a fee or charge on a participant or beneficiary, or on an individual account thereof, the payment of which is a condition to the receipt of benefits under the plan. The foregoing summaries shall be disclosed in accordance with the requirements under 29 CFR 2520.102-2(b).

29 C.F.R. 2520.104b-3 provides:

§ 2520.104b-3 Summary of material modifications to the plan and changes in the information required to be included in the summary plan description.

(a) The administrator of an employee benefit plan subject to the provisions of part 1 of title I of the Act shall, in accordance with § 2520.104b-1(b), furnish a summary description of any material modification to the plan and any change in the information required by section 102(b) of the Act and § 2520.102-3 of these regulations to be included in the summary plan description to each participant covered under the plan and each beneficiary receiving benefits under the plan. Except as provided in paragraph (d) of this section, the plan administrator shall furnish this summary, written in a manner calculated to be understood by the average plan participant, not later than 210 days after the close of the plan year in which the modification or change was adopted. This disclosure date is not affected by retroactive application to a prior plan year of an amendment which makes a material modification to the plan; a modification does not occur before it is adopted. For example, a calendar year plan adopts a modification in April, 1978. The modification, by its terms, applies retroactively to the 1977 plan year. A summary description of the material modification is furnished on or before July 29, 1979. A plan which adopts an amendment which makes a material modification to the plan which takes effect on a date in the future must disclose a summary of that modification within 210 days after the close of the plan year in which the modification or change is adopted. Under the

authority of sections 104(a)(3) and 110 of the Act, a summary description of a material modification or change is not required to be disclosed if it is rescinded or otherwise does not take effect. For example, a calendar year plan adopts a modification in June, 1978. The modification, by its terms, becomes effective beginning in plan year 1979. Before the beginning of plan year 1979, the prospective modification is withdrawn. No summary of the material modification is required to be disclosed.

(b) The summary of material modifications to the plan or changes in information required to be included in the summary plan description need not be furnished separately if the changes or modifications are described in a timely summary plan description. For example, a calendar year plan adopts a material modification on June 3, 1976. The modification is incorporated in a summary plan description furnished on July 15, 1977. No separate summary of the material modification is furnished. The plan adopts another material modification September 15, 1977. A separate summary of the modification is furnished on or before July 29, 1978.

(c) The copy of the summary plan description furnished in accordance with §§ 2520.104b-2(a)(1)(i) and 2520.104b-4 shall be accompanied by all summaries of material modifications or changes in information required to be included in the summary plan description which have not been incorporated into that summary plan description.

(d) Special rule for group health plans--

(1) General. Except as provided in paragraph (d)(2) of this section, the administrator of a group health plan, as defined in section 733(a)(1) of the Act, shall furnish to each participant covered under the plan a summary, written in a manner calculated to be understood by the average plan participant, of any modification to the plan or change in the information required to be included in the summary plan description, within the meaning of paragraph (a) of this section, that is a material reduction in covered services or benefits not later than 60 days after the date of adoption of the modification or change.

(2) 90-day alternative rule. The administrator of a group health plan shall not be required to furnish a summary of any material reduction in covered services or benefits within the 60-day period described in paragraph (d)(1) of this section to any participant covered under the plan who would reasonably be expected to be furnished such summary in connection with a system of communication maintained by the plan sponsor or administrator, with respect to which plan participants are provided information concerning their plan, including modifications and changes thereto, at regular intervals of not more than 90 days and such communication otherwise meets the disclosure requirements of 29 CFR 2520.104b-1.

(3) "Material reduction".

(i) For purposes of this paragraph (d), a "material reduction in covered services or benefits" means any modification to the plan or change in the information required to be included in the summary plan description that, independently or in conjunction with other contemporaneous modifications or

changes, would be considered by the average plan participant to be an important reduction in covered services or benefits under the plan.

(ii) A "reduction in covered services or benefits" generally would include any plan modification or change that: eliminates benefits payable under the plan; reduces benefits payable under the plan, including a reduction that occurs as a result of a change in formulas, methodologies or schedules that serve as the basis for making benefit determinations; increases premiums, deductibles, coinsurance, copayments, or other amounts to be paid by a participant or beneficiary; reduces the service area covered by a health maintenance organization; establishes new conditions or requirements (e.g., preauthorization requirements) to obtaining services or benefits under the plan.

(e) Applicability date. Paragraph (d) of this section is applicable as of the first day of the first plan year beginning after June 30, 1997.

(f), (g) [Reserved]

REPLY BRIEF

Supreme Court, U.S
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No 09-804

IN THE
Supreme Court of the United States

CIGNA CORPORATION AND CIGNA PENSION PLAN,
Petitioners,

v.

JANICE C AMARA ET AL , individually and on behalf of all others similarly situated,
Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

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RULE 29.6 STATEMENT

The corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

REPLY BRIEF FOR PETITIONERS 1

I. THERE IS NO STATUTORY BASIS TO RECOVER BENEFITS BASED ON AN INCONSISTENCY BETWEEN AN SPD AND THE PLAN UNDER ERISA § 502(a)(1)(B) 2

A. The Question Of The Appropriate Remedial Provision Is Properly Before This Court. 3

B. *Kennedy* Did Not Hold Or Suggest That Plaintiffs Can Recover Benefits Based On An Inconsistency Between An SPD And The Plan Under § 502(a)(1)(B) 4

C. The Sundry Statutory And Policy Arguments Of Respondents And The United States Have No Merit 7

II. NEITHER RESPONDENTS NOR THE UNITED STATES PROVIDES ANY PERSUASIVE ARGUMENT AGAINST A DETRIMENTAL-RELIANCE STANDARD 11

A. The Textual Arguments Of Respondents And The United States Are Misplaced 12

B. The "Likely Harm" Standard Finds No Support In Common-Law Doctrines 15

C. The "Likely Harm" Standard Would Not Advance ERISA's Statutory Objectives 17

CONCLUSION 22

TABLE OF AUTHORITIES

Page(s)

CASES

Aiken v. Policy Mgt. Sys. Corp.,
13 F.3d 138 (4th Cir. 1993) 19

Antolik v. Saks, Inc.,
383 F. Supp. 2d 1168 (S.D. Iowa 2005) 19

Blue Cross of Ne. N.Y., Inc. v. Ayotte,
315 N.Y S.2d 998 (App. Div. 1970) 16

Branch v. G Bernd Co.,
955 F.2d 1574 (11th Cir. 1992) 14

Bridge v. Phoenix Bond & Indem. Co.,
553 U.S. 639 (2008) 14, 15

In re Captran Creditors' Trust,
128 B.R. 469 (M.D Fla. 1991) 16

Cent. States, Se. & Sw. Areas Pension Fund v Cent. Transp., Inc.,
472 U.S. 559 (1985) 17

Cummings by Techmeier v. Briggs & Stratton Ret. Plan,
797 F 2d 383 (7th Cir. 1986) 6

Curtiss-Wright Corp. v Schoonejongen,
514 U.S 73 (1995) 1, 3, 7

Eddy v. Colonial Life Ins. Co of Am.,
919 F.2d 747 (D.C. Cir. 1990) 17

Firestone Tire & Rubber Co. v. Bruch,
489 U.S. 101 (1989) 15

Govoni v. Bricklayers, Masons & Plasterers Int'l Union of Am., Local No. 5 Pension Fund,
732 F.2d 250 (1st Cir. 1984) 13

Grant v. Sprint Nextel Corp.,
_ F. Supp. 2d _, 2010 WL 2640627
(W.D. Va. July 2, 2010)... 19

Greeley v. Fairview Health Servs.,
479 F.3d 612 (8th Cir. 2007)..... 14

Gridley v. Cleveland Pneumatic Co.,
924 F.2d 1310 (3d Cir 1991) 1, 2, 9

Hansen v. Cont'l Ins. Co.,
940 F.2d 971 (5th Cir. 1991).....19

Health Cost Controls of Ill., Inc. v.
Washington,
187 F.3d 703 (7th Cir. 1999). 14

Heise v. Genuine Parts Co.,
900 F. Supp. 1137 (D Minn 1995)..... 19

Helfrich v. Carle Clinic Ass'n, P.C.,
328 F.3d 915 (7th Cir. 2003).....11

Kaiser Permanente Emps. Pension Plan v.
Bertozzi, 849 F. Supp. 692
(N.D Cal. 1994).... 19

Kennedy v. Plan Adm'r for DuPont Sav &
Inv. Plan, 129 S. Ct. 865 (2009)..... .. ..1, 4, 5, 6

Kochendorfer v. Rockdale Sash & Trim
Co., Inc. Profit Sharing Plan,
653 F. Supp. 612 (N D. Ill 1987)..... 19

Lee v. Union Elec Co.,
789 F 2d 1303 (8th Cir. 1986)..... 10

McNutt v. J.A. Jones Constr. Co.,
33 F. Supp. 2d 1375 (S.D. Ga. 1998) 19

Ohio v Robinette,
519 U.S. 33 (1996)... 3

Page v PBGC,
968 F.2d 1310 (D.C. Cir. 1992).....10

Pegram v. Herdrich,
530 U.S. 211 (2000) 6

Smith v. Sydnor,
184 F.3d 356 (4th Cir. 1999) 11

Toohey v. Wyndham Worldwide Corp. Health & Welfare Plan,
_ F Supp. 2d _, 2010 WL 2929435
(D. Or. July 26, 2010) 19

U.S. Life Ins. Co. in City of N.Y. v. Mechs. & Farmers Bank,
685 F.2d 887 (4th Cir. 1982) 16

UNUM Life Ins. Co. of Am v. Ward,
526 U.S. 358 (1999) 9

Vance v. Terrazas,
444 U S. 252 (1980) 3

STATUTES

28 U.S.C. § 2072(b) 21

29 U.S.C. § 1022 ..... 10, 12

29 U S.C. § 1022(a) 1, 8

29 U.S.C. § 1024(b)(2) 8

29 U.S.C § 1029(c) 8

29 U S.C. § 1054(h)(6)(A) 8

29 U.S.C. § 1102(a)(1) 1, 6, 12

29 U.S.C § 1102(b)(4) 12

29 U.S.C. § 1104(a)(1)(D) 5, 12

29 U.S.C. § 1132(a)(1)(B) 2, 6

29 U.S C. § 1132(a)(3)(B) 1

REGULATIONS

29 C.F R. § 2520.102-2(a) 10

OTHER AUTHORITIES

John Alan Appleman & Jean Appleman, *Insurance Law & Practice* (rev. 1981) 15

George T. Bogert, *Trusts* (6th ed. 1987) 17

George T. Bogert et al., *The Law of Trusts and Trustees* (2d rev. ed. 1982) 2, 16

H.R. Rep. No. 93-533, *reprinted in* 1974 U.S.C.C.A.N. 4639 8

Restatement (Second) of Trusts 16, 17

S. Ct. R. 14 3

REPLY BRIEF FOR PETITIONERS

Respondents and the United States offer no basis in ERISA's text or this Court's precedent for awarding windfall benefits to thousands of class members who never relied on CIGNA's SPDs. As the plain language of ERISA makes clear, an SPD is not itself an ERISA "plan." *See* 29 U.S.C. § 1102(a)(1) ("Every employee benefit plan shall be established and maintained pursuant to a written instrument."). Rather, it is a statutorily required notice that summarizes the plan's terms. When a plan administrator fails to provide SPDs that are "sufficiently accurate" (*id.* § 1022(a)), the administrator has violated ERISA but has not amended the plan. A participant may recover for that statutory violation under ERISA § 502(a)(3) (29 U.S.C. § 1132(a)(3)(B)), *see Gridley v. Cleveland Pneumatic Co.*, 924 F.2d 1310, 1318-19 (3d Cir. 1991) (Alito, J.), but *only* if the conflict between the SPD and the plan actually caused an injury to the plaintiff by inducing her detrimental reliance.

That conclusion is confirmed by this Court's holding in *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995), that an SPD may not supersede or modify a plan's terms as set forth in the written plan document unless publishing that SPD satisfies the plan's amendment procedures. Neither respondents nor the United States coherently distinguishes *Curtiss-Wright*. Instead, they stake their positions on a barely relevant strand of *dictum* in *Kennedy v. Plan Administrator for DuPont Savings & Investment Plan*, 129 S. Ct. 865 (2009), where the Court stated that it was "uncontested" by the parties that both the written plan and the SPD were "plan documents" for purposes of a section of ERISA not at issue here. It was "uncontested," of course, because *Kennedy* had

nothing to do with the consequences of an SPD's divergence from a plan.

Even if a conflict between an SPD and the plan could somehow enable participants to sue for "benefits due . . . under the terms of [the] plan" under § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B), all parties agree that "nothing in ERISA expressly addresses whether, or in what circumstances, the SPD controls over other documents." U.S. Br. 14-15. For that reason, it would fall to this Court to fashion a sensible common-law standard for recovery. In a quixotic attempt to ground the Second Circuit's "likely harm" standard in the common law of trusts, the United States embraces a "burden-shifting framework" that tracks *precisely* the standard that CIGNA seeks here: one that requires a beneficiary to "pro[ve] that the breach caused him a loss." George T. Bogert et al., *The Law of Trusts and Trustees* § 871 (2d rev. ed. 1982). This Court should adopt that standard—not one that would award a jackpot recovery to thousands of class members who may not have even read their plan's SPD.

I. There Is No Statutory Basis To Recover Benefits Based On An Inconsistency Between An SPD And The Plan Under ERISA § 502(a)(1)(B).

Nothing in the briefs of the respondents or the United States casts doubt on then-Judge Alito's conclusion in *Gridley v. Cleveland Pneumatic Co.*, 924 F.2d 1310 (3d Cir. 1991), that an SPD is not an ERISA plan and that an inconsistency between an SPD and the plan is therefore actionable only under § 502(a)(3).

A. The Question Of The Appropriate Remedial Provision Is Properly Before This Court.

1. Respondents and the United States assert that the question of which remedial provision authorizes recovery based on an inconsistency between an SPD and the plan is not encompassed within the issue that this Court accepted for review. *See* Resp. Br. 37-38 & n 18; U.S. Br. 10, 27-28. They are mistaken. The question of the appropriate statutory basis for this action "is a 'predicate to an intelligent resolution' of the question presented, and therefore 'fairly included therein'" (*Ohio v. Robinette*, 519 U.S. 33, 38 (1996) (quoting S. Ct. R. 14 and *Vance v. Terrazas*, 444 U.S. 252, 258-59 n.5 (1980))—especially given that respondents do not contest that an action under § 502(a)(3) would require a showing of detrimental reliance to recover additional benefits based on an inconsistency between an SPD and the plan. In any event, CIGNA expressly argued in its petition for certiorari that *Curtiss-Wright v. Schoonejongen*, 514 U.S. 73 (1995), forecloses the theory of recovery on which respondents' claim under § 502(a)(1)(B) is premised: that "the allegedly deficient SPDs had 'modified' the Plan." Pet'n 23.

2 Respondents further contend that CIGNA waived its argument regarding the remedial scope of § 502(a)(1)(B) in the district court. Resp. Br. 38 n.19. That is also false. The CIGNA brief that respondents cite argued only that, in light of binding Second Circuit precedent holding that the relief sought by respondents was available under § 502(a)(1)(B), such relief could not *also* be available under § 502(a)(3). *See* D.E. 276, at 12. CIGNA argued in other papers at the district court and appellate levels that § 502(a)(1)(B) "only permit[s] a participant to

seek benefits 'under the terms of [the] plan'—not under an SPD or other plan communication." CIGNA C.A. Reply Br. 27-28; *see also* CIGNA C.A. Opening Br. 45-47 & n.11 ("Defendants acknowledge that other Courts of Appeals have also held that an SPD can effectively modify the terms of an ERISA plan, although some require a showing of prejudice or detrimental reliance . . . [but] none of these Courts of Appeals . . has reconciled these decisions with the Supreme Court's decision in *Curtiss-Wright* . . ."); CIGNA Dist Ct. Post Trial Brief 84, D.E 251 ("Defendants respectfully submit (and raise this issue to preserve it for appeal) that the Second Circuit's suggestion that an SPD can effectively modify the terms of an ERISA plan is inconsistent with the Supreme Court's decision in *Curtiss-Wright* . . . ."); CIGNA Dist. Ct. Prop. Conc. of Law 58, ¶ 203, D.E. 250-2 (same).

B. *Kennedy* Did Not Hold Or Suggest That Plaintiffs Can Recover Benefits Based On An Inconsistency Between An SPD And The Plan Under § 502(a)(1)(B).

On the merits, both respondents and the United States pin their arguments almost entirely to a sentence in this Court's decision in *Kennedy v. Plan Administrator for DuPont Savings & Investment Plan*, 129 S. Ct. 865 (2009). *Kennedy* held that a spousal beneficiary's waiver of benefits is not effective if the ERISA plan itself does not permit such a waiver. *See id.* at 874-77. Respondents and the United States seize on a concluding portion of the opinion in which the Court addressed the petitioner's argument that the form through which the spouse had been selected as a beneficiary was not one of the "documents and instruments governing the plan"

under ERISA § 404(a)(1)(D), which sets forth plan administrators' fiduciary duties. 29 U.S.C. § 1104(a)(1)(D). The Court dismissed that argument as beside the point given that both the plan itself and the SPD required the payment of benefits to the spouse, and it was "uncontested" that those documents are "documents and instruments governing the plan." *Kennedy*, 129 S. Ct at 877.

Kennedy did not have occasion to decide whether an SPD is part of the "plan" within the meaning of § 502(a)(1)(B) or otherwise discuss the consequences of an SPD's divergence from the terms of the plan. That an SPD might generally be considered one of the "documents and instruments governing the plan" for the purposes of fiduciary obligations does not suggest that where an SPD's terms are inconsistent with the terms of the plan set out in the "written instrument under which the plan is established," they supersede those terms. Indeed, in *Kennedy*, though arguing that both the written instrument and the SPD were "plan documents," the United States described the written instrument as "the plan itself," distinguishing it from the SPD. Supp. Br. of the United States, *Kennedy* (No. 07-636). And, in any event, the Court's statement in *Kennedy*, which was "uncontested" by the parties, was *dictum*, given that the SPD did not diverge from the plan in that case and there thus was no need to determine whether the SPD had independent effect as the "plan."

Moreover, contrary to the United States' contention that "a 'plan' is not any single document" (U.S. Br. 22), what *Kennedy* actually held—as a necessary part of its decision—was that the underlying written instrument constituted "an ERISA 'employee pension benefit plan,'" and the opinion treated that written instrument as synonymous with the plan 129 S. Ct

at 868.[1] As courts have long recognized, ensuring that the terms of the plan are set out completely in the written instrument is critical to the "stability and predictability" of plan administration. *Cummings by Techmeier v. Briggs & Stratton Ret. Plan*, 797 F.2d 383, 389 (7th Cir. 1986) And *Kennedy* was careful to "express no view regarding the ability of a participant or beneficiary to bring a cause of action under [§ 502(a)(1)(B)] where the terms of the plan fail to conform to the requirements of ERISA and the party seeks to recover under the terms of the statute," confirming that the opinion suggested nothing about the scope of relief available under § 502(a)(1)(B) 129 S. Ct at 875 n.11.

The controlling decision of this Court is not *Kennedy* but *Curtiss-Wright*, which held that an SPD does not automatically amend plan terms and may effect an amendment *only* when the plan's amendment procedures permit it to do so. That holding cannot be squared with respondents' contention that an SPD that departs from a plan's terms modifies those terms and consequently permits a plaintiff to sue to recover additional benefits under "the plan." 29 U.S C. § 1132(a)(1)(B) Respondents offer no intelligible distinction of *Curtiss-Wright*, asserting only that SPDs that conflict with plan terms "are not 'amendments' to the plan." Resp. Br. 29. That argument is irreconcilable with this Court's holding

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[1] The United States cites *Pegram v Herdrich*, 530 U S 211 (2000), to support its amorphous understanding of what constitutes an ERISA plan U S Br 22 But *Pegram* did not imply that the "written instrument" under ERISA § 402(a)(1) is distinct from the "plan," 29 U S C § 1102(a)(1), but rather identified the characteristics of a written instrument that would qualify it as a "plan " 530 U S at 223

that an SPD that "effect[s] a significant change in the plan's terms"—as would an SPD that entitled participants to recover additional "benefits due . . . under . . [the] plan"—"constitute[s] an 'amendment' to the plan" that must comply with the plan's amendment procedures. *Curtiss-Wright*, 514 U.S at 76, 85

The United States observes that "*Curtiss-Wright* did not address whether the new provision was a valid amendment" or hold "that it would violate plan amendment requirements to determine benefits based on the terms of an SPD." U.S. Br. 24. That is true but irrelevant: *Curtiss-Wright* held that *unless* the SPD complied with the plan's amendment procedures, it could not supersede the terms of the plan Here, the SPD that respondents and the United States claim constitutes part of the "plan" explicitly disclaims such status and provides that the CIGNA Plan—not the SPDs—controls in the event of a conflict *See* J.A. 922a, 938a. Because no party asserts that the SPDs complied with the CIGNA Plan's amendment procedures, *Curtiss-Wright* necessarily establishes that the terms of the SPD did not become part of the plan.

C. The Sundry Statutory And Policy Arguments Of Respondents And The United States Have No Merit.

Aside from *Kennedy*, neither respondents nor the United States offers more than the most meager support for permitting the recovery of benefits based on an inconsistency between the SPD and the plan.

1. Respondents selectively quote the statutory language, asserting that ERISA refers to SPDs and "'other instruments under which the plan was established or is operated'"—the implication being that an SPD is one such instrument. Resp Br. 26 (quoting

29 U.S.C. §§ 1024(b)(2), 1029(c)). But the residual statutory phrase "other instruments" does not in fact refer back to "summary plan description." Rather, it refers to a list of terms beginning with "bargaining agreement". "The administrator shall make copies of the latest updated summary plan description and the latest annual report *and* the bargaining agreement, trust agreement, contract, or *other instruments* under which the plan was established or is operated available." 29 U.S.C § 1024(b)(2) (emphases added); *see also id.* § 1029(c) The only conclusion that can be drawn from this statutory language is that an SPD is *not* an "instrument under which the plan was established or is operated." *See also* 29 U S.C. § 1022(a) (referring to a "summary plan description *of* an employee benefit plan") (emphasis added).

Respondents also cite snippets of legislative history to support their view that the SPD is part of the plan. Resp. Br. 22. Those brief statements say nothing about the remedial scope of § 502(a)(1)(B) or whether Congress intended *all* participants to recover additional benefits whenever an SPD diverges from the terms of the plan. That Congress thought it would be "grossly unfair to hold an employee accountable for acts which disqualify him from benefits, if he had no knowledge of these acts," is fully consistent with CIGNA's plain-language interpretation of ERISA, which permits participants harmed by misrepresentations to recover under § 502(a)(3). H.R Rep. No 93-533 at 7, *reprinted in* 1974 U.S C.C.A.N. 4639, 4646 Indeed, when Congress wanted a disclosure violation to potentially entitle participants to additional benefits under § 502(a)(1)(B), it said so explicitly. *See, e.g.*, 29 U.S.C § 1054(h)(6)(A) (an "egregious failure" by the plan administrator to provide an accurate § 204(h)

notice can lead to an award of additional benefits) Tellingly, ERISA is silent as to the availability of additional benefits based on SPD violations.

The textual analysis set out by then-Judge Alito in *Gridley* is far more persuasive than anything respondents have presented. Respondents dismiss Judge Alito's analysis because it is "only one paragraph" long and because a different Third Circuit panel characterized its holding in the alternative as "dictum." Resp. Br. 39-40 But the brevity of *Gridley*'s discussion—set off in a separately numbered section of the opinion as an alternative holding—is attributable to the fact that it is so "clear[ ]" that an ERISA plan "does not encompass a summary plan description" (924 F.2d at 1318), not to the absence of "thorough" analysis. Resp. Br. 39 [2]

2. For its part, the United States relies on *UNUM Life Insurance Co. of America v. Ward*, 526 U.S. 358 (1999), to argue that an inaccurate statement in an SPD should create a term implied by law in the underlying plan document. U.S. Br. 28-29. In *UNUM Life*, however, this Court held only that a state-law rule that *indisputably* created a mandatory contract term in insurance contracts was not preempted by ERISA. *See* 526 U.S. at 368-77. That holding sheds no light on whether an SPD is a "plan document" and, if so, whether it overrides other plan documents with which it conflicts.

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[2] The United States briefly asserts that respondents' suit could be authorized by other clauses of § 502(a)(1)(B) (U S Br 29), but they suffer from the same flaw Because the SPD is not the "plan," any award obtained in a successful suit would not derive from "rights" under the plan or constitute "future benefits" under the plan

Respondents similarly rely on circuit precedent holding that legally unenforceable terms of ERISA plans, such as unlawful vesting requirements, may not be enforced. Resp Br. 40-41 (citing, *inter alia*, *Page v. PBGC*, 968 F.2d 1310 (D.C Cir. 1992)). But while that is true when a substantive ERISA prohibition *expressly* bars enforcement of a challenged plan term, nothing in ERISA states that an SPD controls over other plan documents in the event of a conflict. And in fact, as respondents acknowledge, the D.C. Circuit held in *Page* that § 502(a)(3)—not § 502(a)(1)(B)—is the appropriate section to enforce "'provisions of this title.'" Resp. Br. 40 (quoting 968 F.2d at 1315) That is precisely CIGNA's point.

3. In its opening brief, CIGNA argued that the structure of ERISA, which assigns the drafting of plans to plan sponsors but the drafting of SPDs to plan administrators, demonstrates that an SPD is not part of the "plan." CIGNA Br. 15-16. The United States disputes this basic structural fact, arguing that ERISA requires an administrator only to "furnish" SPDs to participants, not necessarily to *draft* them, a task that the United States suggests may fall to plan sponsors. U.S. Br. 23.

That interpretation of ERISA contradicts the Department of Labor regulation implementing ERISA § 102, 29 U.S C. § 1022. That regulation states that, "[i]n fulfilling these requirements [that an SPD be comprehensible and comprehensive], the *plan administrator* shall exercise considered judgment and discretion by taking into account such factors as the level of comprehension and education of typical participants in the plan and the complexity of the terms of the plan." 29 C.F.R. § 2520.102-2(a) (emphasis added); *see also, e.g.*, *Lee v. Union Elec. Co.*, 789 F.2d 1303, 1307 (8th Cir. 1986) (explaining

that the regulation applies to "plan administrators, in drafting the summary plan description"). It was thus the understanding of the United States up until this case that ERISA assigns plan administrators—not plan sponsors—the responsibility of drafting SPDs. *See also Helfrich v Carle Clinic Ass'n, P.C.*, 328 F.3d 915, 917 (7th Cir. 2003) (Easterbrook, J.) ("ERISA requires plans to prepare summary plan descriptions . . . . Employer-prepared summaries, by contrast, have no footing in ERISA . . . .").

4. Finally, the United States argues that "[c]hannelling" suits for flawed SPDs into § 502(a)(1)(B) serves ERISA's purposes because § 502(a)(3) "generally" does not include an administrative-exhaustion requirement. U.S. Br. 29-30. Even assuming that this policy concern could influence the Court's interpretation of the plain language of § 502(a)(1)(B) and ERISA's plan amendment requirements, the United States' cited authority states only that the courts of appeals "are in sharp disagreement" over the exhaustion issue, a conflict this Court has yet to resolve *Smith v. Sydnor*, 184 F.3d 356, 364 (4th Cir. 1999). It would be especially misguided to tailor this Court's interpretation of § 502(a)(1)(B) to a policy concern that may not even exist.

II. NEITHER RESPONDENTS NOR THE UNITED STATES PROVIDES ANY PERSUASIVE ARGUMENT AGAINST A DETRIMENTAL-RELIANCE STANDARD.

Even assuming that the recovery of benefits based on an inconsistency between an SPD and the plan is permitted under § 502(a)(1)(B), respondents and the United States offer no plausible basis for

permitting recovery on a mere showing of "likely harm."

A. The Textual Arguments Of Respondents And The United States Are Misplaced.

1. The United States argues that because ERISA § 404(a)(1)(D) requires fiduciaries to act "in accordance with the documents and instruments governing the plan" only "insofar as such documents and instruments are consistent with [ERISA]," 29 U.S C. § 1104(a)(1)(D), and because it is a violation of ERISA § 102 to issue an inaccurate SPD, *id.* § 1022, participants must be permitted to recover based on an inconsistency between an SPD and the plan whenever they make a showing of "likely harm." *See* U.S. Br. 14-15. That rule, the United States contends, "avoids a violation of the SPD provisions" and therefore is compelled by the text of ERISA. *Id.*

That argument is classically question-begging. Regardless of whether the plan or the SPD controls, there will be a violation of ERISA—either § 102, which requires SPDs to be accurate, or § 402, which requires plans to be established "pursuant to a written instrument" that "specif[ies] the basis on which payments are made to and from the plan " 29 U.S.C. § 1102(a)(1), (b)(4). ERISA no more permits that written instrument to be inaccurate than it does an SPD, and it no more allows plans to make *excessive* payments to certain participants than it permits them to make insufficient payments

2 Respondents argue at great length that the "average or 'reasonable' person standard" governs whether an SPD is inaccurate. Resp. Br. 30-33. The question presented, however, is not *whether* an SPD is inaccurate, but rather *what* a plaintiff must prove

to recover benefits based on an inconsistency between an SPD and the plan. Neither the cases that respondents cite for the "average person" standard (Resp. Br. 30) nor the unrelated regulations that respondents identify (*id.* at 31) shed light on that question.

Respondents nevertheless jump from the uncontroverted proposition that an SPD that would mislead an average plan participant violates ERISA § 102 to the conclusion that so long as the conflict with the plan is "material," every participant can recover additional benefits under § 502(a)(1)(B). Resp. Br. 33. Respondents provide no logical or textual reason for that leap. Instead, they manufacture support by contending that the phrase "possible prejudice" in the standard applied by the majority of circuits is equivalent both to the Second Circuit's "likely harm" standard and respondents' "material conflict" standard. *Id.* at 34.

Respondents misread the cases. The first court of appeals to articulate the "significant reliance upon, or possible prejudice" standard was the First Circuit in *Govoni v. Bricklayers, Masons & Plasterers International Union of America, Local No. 5 Pension Fund*, 732 F.2d 250 (1st Cir. 1984) (Breyer, J.). By "possible prejudice," the First Circuit meant whether a plaintiff probably would not have taken a specific action (such as a decision to retire) had she known the true plan terms—a type of detrimental reliance. *See id.* at 252 ("The only conceivable prejudice to which Govoni points . . . concerns his decision to retire . . .").

Subsequent cases from other circuits adopting the *Govoni* standard have similarly understood it as a detrimental-reliance requirement, describing the

standard variously as requiring a plaintiff to "show that he took action or failed to take action that he would not have otherwise, resulting in some detriment" (*Greeley v. Fairview Health Servs.*, 479 F.3d 612, 614-15 (8th Cir. 2007)); to demonstrate that he "has reasonably relied on the summary plan description to his detriment" (*Health Cost Controls of Ill., Inc. v. Washington*, 187 F.3d 703, 711 (7th Cir. 1999)); and to "prove reliance on the summary" (*Branch v. G. Bernd Co.*, 955 F.2d 1574, 1578-79 (11th Cir. 1992) (citing *Govoni*)). In fact, respondents themselves later concede that "[m]any of the cases under the 'possible prejudice' standard reach results that are only compatible with detrimental reliance." Resp. Br. 36.

3. Aside from their self-contradictory reading of lower-court precedent, respondents place great weight on this Court's interpretation of RICO in *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639 (2008). *See* Resp. Br. 49-52. In *Bridge*, the Court held that the private RICO cause of action does not require proof of first-party reliance because "[n]othing on the face of the relevant statutory provisions imposes such a requirement." 553 U.S. at 648. Here, by contrast, "the face of the relevant statute" says nothing at all about the elements of an action to recover benefits based on an inconsistency between an SPD and the plan. *See* U.S. Br. 14-15. It therefore falls to this Court to develop a sensible federal common-law standard for recovery.

In any event, *Bridge* rejected only a *first-party* reliance requirement, while emphasizing that "none of this is to say that a RICO plaintiff who alleges injury 'by reason of' a pattern of mail fraud can prevail without showing that *someone* relied on the defendant's misrepresentations." 553 U.S. at 658. As the

Court explained, "a misrepresentation can cause harm *only* if a recipient of the misrepresentation relies on it," even if that harm ultimately falls on a third party (such as a beneficiary-spouse, in the ERISA context). *Id.* at 656 n.6 (emphasis added)

B. The "Likely Harm" Standard Finds No Support In Common-Law Doctrines.

1. The United States argues that this Court should treat the SPD as a contract because this Court stated in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 113 (1989), that "benefits protected by ERISA are 'contractually defined.'" U.S. Br. 15. *Firestone*, however, said nothing about whether documents other than the underlying written instrument were also to be considered part of the contract, or whether instead an inconsistency between such documents and the written instrument is more properly analyzed under tort or trust law.

The United States draws an analogy to group insurance contracts, where, it says, a certificate promising more favorable benefits trumps an underlying policy. U.S. Br. 17. But the very treatise that the United States cites describes a conflict of authorities among state courts on that issue when ERISA was enacted. *Compare* 1 John Alan Appleman & Jean Appleman, *Insurance Law & Practice* § 46, at 155-56 (rev. 1981) (pages cited by the United States), *with id.* § 46, at 152-53. Thus, for example, in the early 1970s, New York courts held that "[a] certificate of insurance issued to a beneficiary . . . is merely evidence of insurance, not the contract . . . and where"—as with CIGNA's SPDs—"the certificate is expressly made subject to the terms and conditions of the policy, the beneficiary is bound thereby, and in case of

any conflict or ambiguity, the policy controls." *Blue Cross of Ne. N.Y., Inc. v. Ayotte*, 315 N.Y.S.2d 998, 1001 (App. Div. 1970). These divided authorities hardly illuminate the intent of the Congress that enacted ERISA.

2. The United States also points to trust law, analogizing the "likely harm" standard to a burden-shifting framework developed for breaches of trust causing a loss to the trust corpus, such as investment errors. U.S. Br. 17-18; Restatement (Second) of Trusts §§ 205, 212. But to the extent that framework translates in any meaningful way to misstatements in SPDs about the terms of an ERISA plan, it does not remotely resemble the "likely harm" standard: It requires the beneficiary to provide "*proof* that the breach caused him a loss"—precisely what CIGNA argues should be required here. Bogert et al., *supra*, § 871 (emphasis added). Only after the plaintiff has proved loss causation does the burden shift to the trustee to demonstrate that the loss to the trust corpus would have occurred anyway. *See, e.g., In re Captran Creditors' Trust*, 128 B.R. 469, 475 (M.D. Fla. 1991) ("The initial burden is on the trust beneficiaries to prove that a breach of duty occurred *which proximately caused* the injury.") (emphasis added)

Applying that framework, courts have flatly rejected the "novel proposition that, whenever a breach of the obligation by a trustee has been proved, the burden shifts to the trustee to establish that any loss suffered by the beneficiaries of the trust was not proximately due to the default of the trustee." *U.S. Life Ins. Co. in City of N.Y. v. Mechs. & Farmers Bank*, 685 F.2d 887, 896 (4th Cir. 1982). The Second Circuit's "likely harm" standard employs precisely the type of burden-shifting rejected by trust law.

Respondents also look to trust law for support for the "likely harm" standard, but their cited sources have no relevance to the issue in this case Their long quotation from Professor Bogert's treatise (Resp. Br. 44), for example, addresses an entirely different subject—interested transactions between the trustee and the trust. *See* George T. Bogert, *Trusts* § 96 (6th ed. 1987).

Respondents accuse CIGNA of "ignor[ing] an entire line of ERISA cases that have been decided under Section 173" of the Restatement (Second) of Trusts. Resp. Br 44-45. At issue in the cited cases, however, were breach-of-fiduciary-duty claims under § 502(a)(3), which respondents disclaimed here and which in any event have long been held to require a showing of detrimental reliance. CIGNA Br 20-24. Indeed, in each case it was clear that the deceased participant had detrimentally relied on the fiduciary's breach. *See, e.g , Eddy v. Colonial Life Ins. Co. of Am.*, 919 F.2d 747, 749-50 (D.C. Cir. 1990) (participant failed to renew coverage based on misrepresentation). In any event, even if these precedents were otherwise relevant, trust-law principles developed *after* the passage of ERISA do not illuminate the common law of trusts that "Congress invoked" in enacting the statute. *Cent. States, Se. & Sw Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570 (1985).

C. The "Likely Harm" Standard Would Not Advance ERISA's Statutory Objectives.

1 The United States' defense of the "likely harm" standard rests largely on its view that "the SPD is, in significant respects, the paramount plan document." U S. Br. 13. That position focuses too

myopically on only *one* policy objective of ERISA: keeping participants informed of their rights under the plan. While that is certainly an important statutory goal, ERISA also has other important concerns, not the least of which is protecting the solvency of plans by ensuring that fiduciaries administer plans only in accordance with their written terms. Allowing statements in SPDs to trump the written instrument, even where that inconsistency caused no actual harm to the participants, needlessly imperils plan solvency for very little gain in participants' understanding of their rights. In fact, the tendency of a virtual strict-liability standard to encourage administrators to draft unnecessarily detailed and effectively unreadable SPDs likely outweighs any countervailing benefit.

The United States barely addresses ERISA's concern with plan solvency, blithely assuring this Court that it will be easy for an employer "to defeat a claim to benefits by showing that the participant should reasonably have expected that less favorable terms in other documents would govern." U.S. Br. 19. But the United States never gives an example of how an employer could prove this in practice. Indeed, it is hard to see how that showing could ever be made, given that CIGNA's SPDs expressly stated that the underlying plan would control in the event of a discrepancy. J.A. 922a, 938a. If that does not suffice to inform employees that "less favorable terms in other documents would govern," nothing does.

The United States nevertheless contends that the "'likely harm' approach reflects a sensible allocation of the burden of proof" because "an employee may have significant difficulty proving that he relied on the SPD in forming an expectation about his pension benefits," giving as an example an employee

who learned of the inaccurate disclosures through workplace conversations. U.S. Br. 20-21. That concern is vastly overstated. An employee who testified that she learned of a promised benefit from coworkers and offered a plausible example of her reliance on that understanding—for instance, the untimely filing of a benefits claim—would, if credible, have little trouble meeting her burden of proof. Numerous decisions have denied defendants' summary-judgment motions based on nothing more than plausible testimony of reliance by plaintiffs.[3]

The United States also suggests that beneficiaries will be unable to prove that a deceased participant relied on the inconsistency between the SPD and the plan. U.S. Br. 25-26. But that conjecture, too, ignores the actual cases in which courts have found that the plaintiff proffered sufficient evidence of reliance to create a triable issue of fact. *See, e.g.*, *Toohey v. Wyndham Worldwide Corp. Health & Welfare Plan*, _ F. Supp 2d _, 2010 WL 2929435, at *13 (D. Or. July 26, 2010); *Kaiser Permanente Emps. Pension Plan v. Bertozzi*, 849 F. Supp. 692, 699 (N.D Cal. 1994).

Moreover, in stark conflict with their contention that the detrimental-reliance standard is too great a

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[3] *See, e g , Aiken v Policy Mgt Sys Corp* , 13 F 3d 138, 141 (4th Cir 1993), *Grant v. Sprint Nextel Corp* , _ F. Supp 2d _, 2010 WL 2640627, at *3 (W D Va July 2, 2010), *Antolik v Saks, Inc* , 383 F Supp 2d 1168, 1177-78 (S D Iowa 2005); *McNutt v J A Jones Constr Co* , 33 F Supp 2d 1375, 1380 (S D Ga 1998), *Heise v. Genuine Parts Co* , 900 F Supp 1137, 1149 (D Minn 1995), *Kochendorfer v Rockdale Sash & Trim Co , Inc Profit Sharing Plan*, 653 F Supp 612, 616-17 (N D Ill 1987), *see also Hansen v Cont'l Ins Co* , 940 F 2d 971, 983 (5th Cir 1991)

hurdle for plaintiffs, both respondents and the United States repeatedly imply that respondents could satisfy a detrimental-reliance standard *in this case*, adverting to evidence in the record such as an internal CIGNA survey. Resp. Br. 20; U.S. Br. 5, 31-32.[4] Respondents would of course be free to cite such evidence on remand. But their apparent belief that this sort of evidence would suffice to prove detrimental reliance plainly undercuts their contention that the detrimental-reliance requirement would "impose tremendous burdens" on plaintiffs. Resp. Br 5.

2. The United States raises the specter that, in contrast to the "likely harm" standard, a detrimental-reliance approach would "cause benefits under a single plan to vary"—an argument that pointedly reveals that the United States does not believe that defendants could rebut the "prima facie" showing of "likely harm" in individual cases. U S. Br. 26. In any event, some variance in benefits will occur no matter which approach this Court adopts: Even under the Second Circuit's standard, those participants and beneficiaries who either retired before or were hired after the relevant SPD was issued will receive benefits computed under different standards from other employees But only the detrimental-reliance standard will confine that variance to employees who actually suffered an injury based on the conflict be-

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[4] That survey was conducted six months *before* the SPDs at issue here were published and referred to a separate benefit communication from December 1997 Moreover, the survey had an incredibly low response rate *See* J.A 894a It does not take an expert in statistics to see the selection bias inherent in estimating the percentage of employees who read and understood communications based on the few employees who read and responded to a survey

tween the SPD and the plan The "likely harm" standard, by contrast, drains plan assets to the benefit of all employees who happened to be employed when the SPD was issued—to the potential long-term detriment of both those employees and their coworkers who could, for example, see less generous benefit packages offered in the future.

3. The United States argues that a detrimental-reliance requirement would give participants less protection than before ERISA was enacted, when participants supposedly "could recover benefits based on summaries of plan provisions under a contract law theory." U.S. Br. 26. But as the United States concedes in a footnote, pre-ERISA decisions "generally allowed underlying documents to prevail over a summary if the summary stated that they would control"—as CIGNA's SPDs did here. U.S. Br. 26 n.8; *see also* J.A. 922a, 938a. Thus, prior to ERISA, in a case such as this one, *no participants* would have been able to recover additional benefits based on the inconsistency between the SPDs and the plan.

4 Finally, respondents, supporting *amici*, and even the United States repeatedly complain that with a detrimental-reliance requirement, plaintiffs "could never prevail in a class action" (Resp. Br 5), with *amici* going so far as to say that the requirement is "inconsistent with policies underpinning Federal Rule of Civil Procedure 23." NELA Br 31. One can scarcely imagine a clearer violation of the Rules Enabling Act's admonition that the federal rules shall not "abridge, enlarge or modify any substantive right" than to interpret ERISA with an eye toward facilitating class certification. 28 U.S.C. § 2072(b). In any event, the concern that precluding certification of individualized ERISA claims would foreclose meritorious suits is unfounded. Suits for

pension benefits are not negative-value suits, such as some antitrust actions, where each putative plaintiff may be entitled to only a few dollars. In this case, for example, two of the named plaintiffs alleged that they were owed more than $30,000 in benefits. *See* J A. 113a. Even if it were proper to interpret federal statutes to facilitate class certification, it would be unnecessary to do so in a setting such as this, where plan participants generally have a strong incentive to file individual claims.[5]

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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[5] Indeed, individual plaintiffs regularly file claims based on an alleged inconsistency between an SPD and the plan *See, e g , supra* note 3

SUPPLEMENTAL BRIEF

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Nos. 09-784 and 09-804

In the Supreme Court of the United States

JANICE C. AMARA, ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PETITIONERS

v.

CIGNA CORPORATION, ET AL., RESPONDENTS

CIGNA CORPORATION, ET AL., PETITIONERS

v.

JANICE C. AMARA, ET AL., RESPONDENTS

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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TABLE OF CONTENTS

I. CIGNA'S PETITION SHOULD BE DENIED. . 1

II. THE COURT SHOULD GRANT AMARA'S PETITION, VACATE THE SUMMARY AFFIRMANCE OF THE DENIAL OF RELIEF FOR THE ERISA §204(h) VIOLATION AND THE REPRESENTATIONS THAT "SIGNIFICANT REDUCTIONS IN THE RATE OF FUTURE BENEFIT ACCRUAL WERE NOT A COMPONENT" OF THE CHANGES AND REMAND FOR CONSIDERATION IN LIGHT OF *CONKRIGHT*. 2

III. ALTERNATIVELY, IF CIGNA'S PETITION IS GRANTED, THE AMARA PETITION SHOULD ALSO BE GRANTED. 11

CONCLUSION. 12

TABLE OF AUTHORITIES

Cases

Alabama Power Co. v. Davis, 431 U.S. 581 (1977) 5

Allied Chem. & Alkali Workers, Local Union No. 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971) 5

Barry v. Barchi, 443 U.S. 55 (1979) 11

Bridge v. Phoenix Bond & Indemnity Co., 553 U.S. 639, 128 S.Ct. 2131 (2008) 3-4

Buus v. WaMu Pension Plan, 2007 WL 4510311 (W.D.Wa. 2007) 3

Conkright v. Frommert, 130 S.Ct. 1640 (2010) 6-8, 10

Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73 (1995) 2

Firestone Tire & Rubber Co. v. Bruch, 489 U.S.101 (1989) 10

Frommert v. Conkright, 433 F.3d 254 (2d Cir. 2006) 3

Hakim v. Accenture United States Pension Plan, 656 F. Supp. 2d 801 (S.D.Ill. 2009) 3

Hardt v. Reliance Standard Life Ins. Co.,
__ S.Ct. __, 2010 WL 2025127 (2010) 4

Henry v. City of Rock Hill, 376 U.S. 776 (1984) . . 9

Kennedy v. Plan Admin. for DuPont Sav. & Inv. Plan, 129 S.Ct. 865 (2009) 6

Lockheed Corp. v. Spink, 517 U.S. 882 (1999) 5

Mass. Mut. Life Ins. Co. v. Russell,
473 U.S. 134 (1985) 5

Production and Maintenance Employees' Local 504 v. Roadmaster Corp.,
954 F.2d 1397 (7th Cir. 1992) 3

Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc.,
369 U.S. 17 (1962) 5

Statutes and Regulations

ERISA §204(h), 29 U.S.C. §1054(h) . . . 2-3, 7-9, 11

ERISA §502(a), 29 U.S.C. §1132(a) 10

Consolidated Omnibus Budget Reconciliation Act (COBRA),
P.L. 99-272 (1986) 3

Economic Growth and Tax Relief Reconciliation Act (EGTRRA),
P.L. 107-16 (2001) 3

29 C.F.R. 2520.102-2(a) 1

29 C.F.R. 2520.102-3 1

29 C.F.R. 2520.104b-3(a) 1

Miscellaneous

Eugene Gressman, et al, *Supreme Court Practice* (9th ed.) 8, 11

SUPPLEMENTAL BRIEF

The Amara Petitioners (and Respondents in 09-804) submit this brief in response to the brief for the United States as amicus curiae.

I. CIGNA'S PETITION SHOULD BE DENIED.

As Respondents, the Amara class agrees with the Government's position about what is required, and not required, to obtain a remedy for violations of the statutory and regulatory requirements for Summary Plan Descriptions (SPDs) and Summaries of Material Modification (SMMs). SG Br. at 11-19. The Amara Respondents also agree with the reasons why certiorari is inappropriate based on CIGNA's petition. *Id.* at 10-19. The Government's position is consistent with the Department of Labor's longstanding regulations requiring SPDs to "accurately reflect the contents of the plan" and be "sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan." 29 C.F.R. 2520.102-2(a) and 2520.102-3. SMMs must likewise "understandably" describe material modifications to a plan, including "any change in the information" required to be disclosed in the SPD. 29 C.F.R. 2520.104b-3(a).

Although the Government does not take a position on the waiver issue, Respondents reiterate that CIGNA did not challenge the Second Circuit's "likely prejudice" standard below. CIGNA's Reply offers only two cites to support such a challenge. Reply at 3. First, CIGNA cites a footnote from its own appellate brief, which merely states: "Defendants acknowledge that

other Courts of Appeals have also held that an SPD can effectively modify the terms of an ERISA plan, although some require a showing of prejudice or detrimental reliance and others do not." This does not challenge the "likely prejudice" standard. CIGNA then pulls a quote out of context from *Amara*'s *appellate reply brief*, which stated that CIGNA "argues that *Burke* ... should be overturned and that this Circuit should hold that inadequate or misleading SPDs should not control over conflicting plan terms," citing CIGNA's Appellate "Br. at 43-48." That sentence, and the referenced pages, also relate to CIGNA's argument that *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995), precludes relief for an inadequate SPD – even with a showing of reliance or prejudice.

II. THE COURT SHOULD GRANT AMARA'S PETITION, VACATE THE SUMMARY AFFIRMANCE OF THE DENIAL OF RELIEF FOR THE ERISA §204(h) VIOLATION AND THE REPRESENTATIONS THAT "SIGNIFICANT REDUCTIONS IN THE RATE OF FUTURE BENEFIT ACCRUAL WERE NOT A COMPONENT" OF THE CHANGES AND REMAND FOR CONSIDERATION IN LIGHT OF *CONKRIGHT*.

The Government's position that certiorari should be denied on Amara's petition is based on a misreading of the District Court's decision on available relief for the ERISA §204(h) violation. SG Br. at 21. After determining based on a seven-day trial that ERISA §204(h) was violated, the District Court separately

ruled that the remedy of reinstatement to the prior formula was an "impossibility." App. 42a.[1] The District Court was "particularly reluctant" to order a "widespread return" to the prior formula given the large number of participants and CIGNA's exposure. App. 25a, 41a. The court determined that the only way the Plaintiff class could obtain that remedy was by proving "bad faith." App. 41a. "Bad faith" is not a requirement for a §204(h) violation, either before or after the 2001 EGTRRA amendments. See P.L. 99-272, §11006(a) (1986) and P.L. 107-16, §659 (2001). The remedy for a violation of §204(h) is built into the terms of the statute: An amendment that reduces the future rate of benefit accruals is ineffective unless it is disclosed in advance as the statute requires.[2]

As *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639, 128 S.Ct. 2131 (2008), held, the liability

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[1] Citations to the "App." are to the Appendix in 09-784.

[2] See, e.g., *Frommert v. Conkright*, 433 F.3d 254, 268 (2d Cir. 2006) ("without such proper notice to Plan participants, the amendment was ineffective as to them"); *Production and Maintenance Employees' Local 504 v. Roadmaster Corp.*, 954 F.2d 1397, 1404 (7th Cir. 1992) (because the amendment that violated Section 204(h) is "ineffective," "the plan continued in force as if it had not been amended"); *Hakim v. Accenture United States Pension Plan*, 656 F. Supp. 2d 801, 814 (S.D.Ill. 2009) ("if Plaintiff prevails on his § 204(h) claims, the 1996 Amendment can be deemed ineffective as to him, and he may be entitled to additional Plan benefits"); *Buus v. WaMu Pension Plan*, 2007 WL 4510311, *4 (W.D.Wa. 2007) ("the appropriate remedy under 29 U.S.C. §1054(h)" is that the amendment "that reduced Plaintiffs' rate of benefit accrual should be disregarded").

requirements in a statute cannot be revised to impose additional requirements through the "back door." 128 S.Ct. at 2142. Accord *Hardt v. Reliance Standard Life Ins. Co.*, __ S.Ct. __, 2010 WL 2025127, *7 (2010) (denying relief under a statute based an "invented" element is equivalent to denying the right granted by statute).

With respect to a remedy for the representations in CIGNA's SMM that retirement benefits would be "comparable" or "larger" (with no "cost savings" to CIGNA) after the changes to the formula, the Government avoids the principles that it espouses in response to CIGNA's petition by characterizing these representations as a "vague promise." SG Br. at 20. The Government's characterization is contradicted by the District Court's trial findings: The District Court found that CIGNA "misled plan participants into believing that significant reductions in the rate of future benefit accrual were not a component or a possible future result of Part B." App. 185a. This finding does not suggest a "vague promise," but an enforceable contractual condition.

The Government's characterization of "comparable" as "vague" is also contradicted by the case law on contract provisions based on "comparable" benefits or jobs. As the Amara petitioners have shown with citations to seventeen cases, Pet. Br. at 23-26, a promise that something will be "comparable" to an objective existing standard, e.g., a representation that "significant reductions in the rate of future benefit accrual [are] not a component or possible future result" of a change, can be enforced without having "entirely

to rewrite" a plan. The District Court can order that no significant reductions in the rate of future benefit accrual will occur by reference to benefits under the prior provisions, the same as in cases where a contract promises that a benefit, a job, materials used or supplied, a contracting party's performance or an end-product will be "comparable" to an objective standard.

This Court has repeatedly recognized that employee benefit plans are part of the contract of employment.[3] It also recognizes that ERISA-required

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[3] See, e.g., *Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc.*, 369 U.S. 17, 20, 26-28 (1962) ("strike settlement agreement" that included provisions not to reduce employee benefit programs is "contract" enforceable under Section 301 of the LMRA because it affects "working conditions"); *Allied Chem. & Alkali Workers, Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 182 n.20 (1971) (retiree has "a federal remedy under § 301 of the Labor Management Relations Act for breach of contract if his benefits were unilaterally changed"); *Alabama Power Co. v. Davis*, 431 U.S. 581, 592-93 (1977), ("It is obvious that pension payments have some resemblance to compensation for work performed. Funding a pension program is a current cost of employing potential pension recipients, as are wages"); *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 147-48 (1985) (recognizing the "repeatedly emphasized purpose [of ERISA] to protect contractually defined benefits" and describing a claim for benefits as an action to recover "contractually authorized benefits"); *Lockheed Corp. v. Spink*, 517 U.S. 882, 893-94 (1999) ("Among the ... legitimate benefits that a plan sponsor may receive from the operation of a pension plan are attracting and retaining employees, paying deferred compensation, settling or avoiding strikes, providing increased compensation without increasing wages, increasing employee turnover, and reducing the likelihood of lawsuits by encouraging employees who would otherwise have been laid off to depart voluntarily").

summaries are part of the "instruments governing" such plans. *Kennedy v. Plan Admin. for DuPont Sav. & Inv. Plan*, 129 S.Ct. 865, 877 (2009). For the employment contract to be effective and binding, the courts must provide remedies for violations, including for ERISA notices that benefits will be "comparable" and that "significant reductions in the rate of future benefit accrual [are] not a component or a possible future result" of a change to a plan's benefit formula.[4]

The Government's position that the District Court recognized that it possessed broad discretionary authority to remedy these violations, but exercised its discretion not to do so (SG Br. at 20-21) is belied by the District Court's statements about "impossibility," "bad faith," and the need "entirely to rewrite" the plan, as well as the District Court's recognition of its "considerable uncertainty" with the "particularly troublesome" outcome that reinstatement to the prior formula was an "impossibility" and its plea for guidance from the Second Circuit. Now, following the grant of certiorari and decision in *Conkright v. Frommert*, 130 S.Ct. 1640 (2010), everyone, including the Government and CIGNA in opposing a GVR, recognizes that the district courts possess "broad remedial authority" to redress violations of ERISA's notice requirements. That agreement did not exist before *Conkright*. Instead, CIGNA argued below that

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[4] The Government repeats the District Court's statement that Plaintiffs "concede[d] that the Court does not have such authority." But Plaintiffs' position was that the Court could provide the requested relief *without* having to "entirely rewrite" the Plan. App. Br. at 46; Pet. at 9 n. 2.

the District Court lacked any such authority. 1/13/09 Br. of Appellees at 52 ("there is no basis for awarding benefits based on the terms of Part A before the freeze"); *id.* at 54 ("[T]here is nothing in any of ERISA's remedial provisions that allows a court to act as a plan sponsor and create a new benefit formula"). In light of *Conkright* and the agreement of the parties and the Government concerning the district courts' broad remedial authority, the class and the District Court deserve the opportunity to make a decision on relief for CIGNA's notices that reductions "were not a component or a possible future result" of the new benefit formula without the "considerable uncertainty" that permeated the remedies decision.

As in *Conkright*, the ERISA violations at issue here include violations of ERISA §204(h)'s notice provisions. This Court granted certiorari in *Conkright* to address the district court's "'allowable discretion' ... in the course of calculating additional benefits due under the plan as a result of an ERISA violation." No. 08-810. The majority decision recognizes, as does the dissent, that even if deference to a new plan interpretation continues after "a single honest mistake," the District Court has the responsibility to determine whether a plan administrator's proposed interpretive approach to a remedy "violate[s] ERISA's notice requirements." 130 S.Ct. at 1652 n.2. *Conkright* recognizes that whether the proposed remedy violates ERISA is "an argument about the merits, not the proper standard of review" and cites pages 25-26 of the Government's amicus brief which states that a plan administrator's proposed interpretation and remedial

approach may not recreate the violations that spawned the litigation or create new violations of ERISA's notice requirements.[5] Here, the Second Circuit's summary affirmance of the District Court's decision not to provide relief for the violations of ERISA §204(h)'s notice requirements and the SMM requirements, which was rendered after the grant of certiorari in *Conkright*, did not offer any explanation or guidance for the District Court on its allowable discretion. The Second Circuit's summary affirmance should be vacated and remanded for a determination of relief on "the merits" with no deference to any non-interpretive positions taken by CIGNA such as that there was "no basis for awarding benefits based on the terms of Part A before the freeze" or that the District Court should be "particularly reluctant" to order a "widespread return" to the prior formula.

The Government diminishes the importance of Amara's petition by stating that "whether the district court misapprehended the remedies available under the prior version of Section 204(h) is of little continuing importance." SG Br. at 21. This ignores the principles related to a GVR and the rights of a 27,000-person class.[6] The Government's statement is also

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[5] See also 130 Sup.Ct. at 1650 (holding that deference to plan interpretations is separate from the question of whether "specific provisions requiring use of the phantom account method could not be applied to respondents due to lack of notice").

[6] See Eugene Gressman, et al, *Supreme Court Practice* (9th ed.), §5.12, at 349 ("It seems fairly clear that the Court does not treat the summary reconsideration order as the functional

inaccurate because the District Court's requirement of "bad faith" when a nominal "freeze" is interposed between a prior formula and reductions in future benefits would create a continuing loophole under both the current and the prior versions of ERISA §204(h). The Government's position also depends on the improper characterization of the trial finding that reductions were "not a component or a possible future result" as a "vague promise," even though the ability to enforce promises of "comparable" benefits with no "significant reductions" is clearly of continuing importance to employees nationwide.

The Government lastly asserts that the District Court's decision to provide relief for the periods of "wear-away" while providing no relief for the §204(h) violation or the representations in the SMM of comparable or larger benefits with no significant reductions is a "fair remedy." SG Br. at 20. Apart from the fact that these are separate violations, the District Court recognized that the remedy for the periods of "wear-away" provided only 20-25% of the relief required to remedy the other violations and that thousands of class members would be left with no relief because they were unaffected by the wear-away periods. See App. 47a-48a.

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equivalent of a summary reversal order and that the lower court is being told merely to reconsider the entire case in light of the intervening precedent–which may or may not compel a different result"); *Henry v. City of Rock Hill*, 376 U.S. 776, 777 (1984) (a GVR does "not amount to a final determination on the merits" but simply "indicate[s] that we [find the intervening precedent] sufficiently analogous and, perhaps, decisive to compel reexamination of the case").

In summary, the Government's rationale for why *Conkright* will not support a GVR for the Amara Petitioners is unsatisfactory for three reasons. First, the District Court literally pleaded for guidance from the appellate court and expressed "considerable uncertainty" about its discretionary authority to remedy the violations that it found absent "bad faith" or having "entirely to rewrite" the plan.

Second, this Court's grant of certiorari in *Conkright* recognizes that there is a conflict among the circuits about the "'allowable discretion'... in the course of calculating additional benefits due under the plan as a result of an ERISA violation." This Court remanded *Conkright* recognizing the district court's discretionary authority to remedy violations of "ERISA's notice requirements" on "the merits" even if a plan administrator proposes a different remedial approach. This Court should do the same here. Everyone, including CIGNA, presently recognizes that district courts possess broad remedial authority under ERISA §502(a) and *Conkright* to remedy violations of "ERISA's notice requirements," with the exception of the deference to plan interpretations required by *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S.101 (1989). While a district court must defer to a plan administrator's interpretation of a plan provision if the administrator has discretionary authority and has theretofore only committed "a single honest mistake," the district court must provide appropriate remedies on "the merits" for the violations of "ERISA's notice requirements" established at trial.

Third, it cannot be overemphasized that the retirement benefits this class of over 27,000 current and former employees has lost because of CIGNA's "affirmatively and materially misleading notices" are irretrievable if the federal courts do not award appropriate remedies for violations of rights established at trial. CIGNA's current and former employees cannot obtain a "do-over" of their careers from 1998 to 2008 either with CIGNA or another employer.

III. ALTERNATIVELY, IF CIGNA'S PETITION IS GRANTED, THE AMARA PETITION SHOULD ALSO BE GRANTED.

If, despite the Amara Respondents' opposition and the Government's invitation brief, certiorari were granted to CIGNA, the Amara petition should also be granted. As the Government's brief points out, the District Court justified its failure to provide relief for the §204(h) violation in part by reference to the "substantial" relief that it was awarding for the misleading disclosures about periods of wear-away. SG Br. at 9, 19 and 21. If CIGNA were to succeed in overturning that "substantial" relief, the District Court should be allowed to revisit its decisions to decline to provide relief for the other violations. "If the first petition asserts that a judgment for damages is too high, a cross-petition must be filed by a party who wishes to argue that the same amount is too low." *Supreme Court Practice* (9th ed.), §6.35, at 489 n.133; *Barry v. Barchi*, 443 U.S. 55, 69 n.1 (1979) (concurring opinion) (cross-appeal is necessary to present

argument that "would result in greater relief than was awarded him by the District Court").

CONCLUSION

For the foregoing reasons, CIGNA's petition for a writ of certiorari should be denied and the Court should GVR Amara's petition in light of *Conkright*, or alternatively, grant Amara's petition if CIGNA's petition is granted.

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SUPPLEMENTAL BRIEF

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IN THE
Supreme Court of the United States

CIGNA CORPORATION AND CIGNA PENSION PLAN,
Petitioners,

v.

JANICE C. AMARA ET AL., individually and on behalf of all others similarly situated,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

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RULE 29.6 STATEMENT

The corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

TABLE OF CONTENTS

Page

RULE 29.6 STATEMENT i

TABLE OF AUTHORITIES iii

SUPPLEMENTAL BRIEF FOR PETITIONERS 1

ARGUMENT 3

CONCLUSION 10

TABLE OF AUTHORITIES

Page(s)

CASES

Amchem Prods., Inc. v. Windsor,
521 U.S. 591 (1997) 4

Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. & Research Found.,
334 F.3d 365 (3d Cir. 2003) 1, 7

Chiles v. Ceridian Corp.,
95 F.3d 1505 (10th Cir. 1996) 4, 6

Conkright v. Frommert,
130 S. Ct. 1640 (2010) 3

Curtiss-Wright Corp. v. Schoonejongen,
514 U.S. 73 (1995) 5

Govoni v. Bricklayers, Masons & Plasterers Int'l Union of Am., Local No. 5 Pension Fund,
732 F.2d 250 (1st Cir. 1984) 2, 8

Greeley v. Fairview Health Servs.,
479 F.3d 612 (8th Cir. 2007) 3, 7

Heffner v. Blue Cross & Blue Shield of Ala., Inc., 443 F.3d 1330
(11th Cir. 2006) 6, 7

Morales-Alejandro v. Med. Card Sys., Inc.,
486 F.3d 693 (1st Cir. 2007) 7

Pilot Life Ins. Co. v. Dedeaux,
481 U.S. 41 (1987) 4

Rush Prudential HMO, Inc. v. Moran,
536 U.S. 355 (2002) 3

Schwartz v. Prudential Ins. Co. of Am.,
450 F.3d 697 (7th Cir. 2006) 7

Stilner v. Beretta U.S.A. Corp.,
74 F.3d 1473 (4th Cir. 1996) (en banc) 8

Washington v. Murphy Oil USA, Inc.,
497 F.3d 453 (5th Cir. 2007) 1, 2, 7

Wilkins v. Mason Tenders Dist. Council Pension Fund, 445 F.3d 572
(2d Cir. 2006) 7

STATUTES

28 U.S.C. § 2072(b) 5

29 U.S.C. § 1022 6

29 U.S.C. § 1024 6

29 U.S.C. § 1054(h) 6

29 U.S.C. § 1054(h)(1) 7

29 U.S.C. § 1054(h)(6) 7

SUPPLEMENTAL BRIEF FOR PETITIONERS

The government concedes that "courts disagree on the extent to which participants must show prejudice or reliance to recover benefits as described in the SPD." U.S. Br. 10. Indeed, the government could not plausibly have denied the existence of this "disagree[ment]" because both the lower courts and respondents themselves have explicitly acknowledged that the "Courts of Appeals . . . have taken differing positions on this question." *Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. & Research Found.*, 334 F.3d 365, 380 (3d Cir. 2003); *see also Washington v. Murphy Oil USA, Inc.*, 497 F.3d 453, 458 n.1 (5th Cir. 2007) ("five-way circuit split"); Opp. at 9.

The government further admits that "this Court's intervention may be warranted at some point to resolve this disagreement." U.S. Br. 17. Again, the government could hardly have advanced a different view: Ten circuits have now weighed in on the question, at least three firmly entrenched positions have emerged, and the split has only deepened in recent years. *See Washington*, 497 F.3d at 458-59 (adopting the no-reliance-or-prejudice standard applied by only two other circuits). The reasons for this Court to settle this disputed issue of ERISA law—which has profound implications for ERISA plans and their sponsors, administrators, and participants—are clear and compelling.

Despite acknowledging the widespread "disagreement" among the circuits and the inevitable need for this Court's guidance, the government urges the Court to deny review because this case purport-

edly "is not an appropriate vehicle" for resolving the question presented. U.S. Br. 10.

The government's grounds for opposing review are specious. In fact, the government's defense of the "likely harm" standard applied by the Second Circuit—*but by no other court*—simply underscores the necessity of this Court's review. If the government and Second Circuit are correct, then *nine* circuits—the six circuits that require an individualized showing of reliance or prejudice, and the three circuits that do not require any showing of reliance or prejudice—are applying the wrong standard. If the lower courts are indeed committing such nearly universal error, then this Court should grant review and conclusively dispel that pervasive misunderstanding of ERISA.

The government's efforts to portray this case as a poor vehicle are equally unpersuasive. The government's primary contention appears to be that the specific facts of this case might not recur in the future. But the *legal* issue presented arises whenever plan participants seek to recover benefits based on a conflict between an SPD and the plan. In *every* such case, the court must decide upon a legal standard that will govern recovery based on the alleged conflict—no matter whether the conflict concerns the possibility of "wear away," the years of service required to receive benefits (*Washington*, 497 F.3d at 455), the effect of "breaks in service" (*Govoni v. Bricklayers, Masons & Plasterers Int'l Union of Am., Local No. 5 Pension Fund*, 732 F.2d 250, 251 (1st Cir. 1984) (Breyer, J.)), or any other plan provision.

That legal question is squarely presented in this case and should be authoritatively resolved by this Court.

ARGUMENT

This Court recently reaffirmed that "ERISA 'induc[es] employers to offer benefits by assuring a predictable set of liabilities, under uniform standards of primary conduct and a uniform regime of ultimate remedial orders and awards when a violation has occurred.'" *Conkright v. Frommert*, 130 S. Ct. 1640, 1649 (2010) (quoting *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 379 (2002)). But the "efficiency, predictability, and uniformity" that are the hallmarks of ERISA (*id.*) are impossible to attain where, as here, the circuits are hopelessly divided on a recurring question of ERISA interpretation.

The government appears to be content with prolonging that uncertainty and disuniformity because the Second Circuit purportedly decided *this* case correctly. Even if the Second Circuit's application of its aberrational "likely harm" standard were correct, however, that would be no reason to deny review. Doing so would permit nine circuits to continue applying two other standards that the government believes to be erroneous—one of which authorizes "windfall[s] for some employees at the expense of plans and their sponsors" (U.S. Br. 12), and the other of which purportedly imposes unwarranted evidentiary burdens on plan participants. *Id.* at 15. If the Second Circuit, alone among the courts of appeals, has decided this issue correctly, then this Court should grant review and say so.

In any event, the Second Circuit's decision is *not* correct—as the Eighth Circuit recently held in a decision that expressly *rejected* the Second Circuit's "likely harm" standard in favor of the reliance-or-prejudice approach. *See Greeley v. Fairview Health Servs.*, 479 F.3d 612, 614 (8th Cir. 2007) (district

court "erred by adopting a 'likely harm' prejudice standard" because, "to recover . . . for a faulty SPD, this court requires the employee to show he relied on its terms to his detriment"). Applying any rule other than the reliance-or-prejudice standard adopted by the majority of circuits "would allow a windfall for" employees who never read the SPD and who were thus not even aware that the language of the SPD conflicted with the terms of the plan. *Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1519 (10th Cir. 1996). Such unwarranted recoveries by employees who suffered no cognizable injury would "unfairly increase costs for employers and their insurers, who rely on the terms of the plan in providing benefits and coverage." *Id.* "This in turn could jeopardize the solvency of the plan with respect to the remaining employees" (*id.*), and undermine the "careful balanc[e]" that ERISA strikes between protecting plan participants and promoting plan formation. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987).

In this case, the shortcomings of the Second Circuit's "likely harm" standard were magnified 26,000-fold by the district court's refusal to "require an individualized showing" of harm from *any* member of the class—"even from the named Plaintiffs themselves." Pet. App. 164a. The individual class members were not required to prove that they actually read the allegedly deficient SPD, that the SPD gave them an erroneous impression about the features of CIGNA's cash balance plan, or that they took (or decided not to take) some specific action as a result of their review of the SPD. The possibility that thousands of uninjured class members may have been permitted to recover by this undifferentiated, classwide approach is legally intolerable. *Cf. Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997) ("Rule 23's

requirements must be interpreted in keeping with Article III constraints, and . . . 'shall not abridge, enlarge or modify any substantive right.'") (quoting 28 U.S.C. § 2072(b)).[1]

Moreover, none of the purported vehicular problems identified by the government can withstand even cursory examination.

The government first contends that review is not warranted because the "factual setting" of this case "is not likely to recur" due to the fact that "'wear away' is now illegal" under amendments to ERISA. U.S. Br. 17, 18. But, as explained above, whether the specific *facts* of this case recur, the question of *law* presented by those facts—the showing that a plaintiff must make to recover based on a conflict between the SPD and the plan—recurs with great frequency and is certain to continue to produce divergent judicial outcomes in the future. *See, e.g.*, Reply Br. 5 (citing recent cases). Indeed, the factual setting of this case has no bearing on whether the district court should have required respondents to make

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[1] The Second Circuit's decision is wrong for the additional reason that the publication of CIGNA's SPD did not satisfy the Plan's formal amendment procedures and thus cannot have modified the benefits to which participants were entitled under the terms of the Plan. *See Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 83-85 (1995). The government contends that *Curtiss-Wright* is inapposite because the district court's award of additional benefits allegedly did "not rest on the theory that the SPD has formally amended the plan." U.S. Br. 16. But, in awarding relief to the class, the district court explicitly held that "the terms of [the Plan] ha[d] been correspondingly *modified* by CIGNA's October 1998 and September 1999 Summary Plan Descriptions." Pet. App. 218a (emphasis added). *Curtiss-Wright* forecloses the possibility of such unforeseen and unauthorized plan amendments.

an individualized showing of reliance or prejudice to recover based on the conflict between the SPD and the Plan. The answer to that legal question is determined by the provisions of ERISA—which apply with equal force to *all* SPD-based claims—and does not vary based on the facts of each particular SPD-based dispute.[2]

Second, the government observes that Section 204(h) of ERISA, 29 U.S.C. § 1054(h), was amended in 2001 to provide an additional remedy for "defective notice of a plan amendment reducing the future accrual of benefits." U.S. Br. 18. But the revised version of Section 204(h) applies only to the specific notices required under that section of ERISA, *not to SPDs*. Had Congress intended to provide the identical remedy for defective SPDs, it would have amended ERISA's SPD provisions to include the same language as amended Section 204(h). It did not do so. 29 U.S.C. §§ 1022, 1024. Moreover, Section 204(h) applies only to a limited subset of pension-plan amendments—those that result in a "sig-

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[2] The government's suggestion that the six circuits that apply the reliance-or-prejudice standard "might well agree with the courts below" that respondents' showing was "sufficient to entitle affected employees to relief" is wholly unfounded. U.S. Br. 18. Those courts require "*each* individual plaintiff [to] demonstrate some reasonable reliance on the SPD provisions or prejudice flowing from the inconsistency between the SPD and the Plan master document." *Chiles*, 95 F.3d at 1519 (emphasis added); *see also Heffner v. Blue Cross & Blue Shield of Ala., Inc.*, 443 F.3d 1330, 1344 (11th Cir. 2006) ("in order to be entitled to relief each class member must prove that he relied on the . . . plan's SPD"). In this case, in contrast, the district court expressly refused to "require an individualized showing" of reliance or prejudice and assumed that "*all* class members were affected *equally*" by CIGNA's SPD. Pet. App. 164a-65a (emphases added).

nificant reduction in the rate of future benefit accrual" (*id.* § 1054(h)(1))—and is categorically inapplicable to cases involving disability and other *welfare* benefit plans. *See* 29 U.S.C. § 1054(h)(6) ("In the case of any egregious failure to meet any requirement of this subsection . . . the provisions of the applicable *pension* plan shall be applied . . . .") (emphasis added). For those reasons, the question presented in this case has continued to arise frequently since the 2001 amendments in both the pension and welfare settings—and will continue to confound courts in the future in the absence of authoritative guidance from this Court. *See, e.g.*, *Washington*, 497 F.3d 453; *Morales-Alejandro v. Med. Card Sys., Inc.*, 486 F.3d 693 (1st Cir. 2007); *Greeley*, 479 F.3d 612; *Schwartz v. Prudential Ins. Co. of Am.*, 450 F.3d 697 (7th Cir. 2006); *Wilkins v. Mason Tenders Dist. Council Pension Fund*, 445 F.3d 572 (2d Cir. 2006); *Heffner*, 443 F.3d 1330; *Burstein*, 334 F.3d 365.

Third, the government contends that CIGNA "fail[ed] to take advantage of opportunities to discover whether individual class members were actually harmed" by its SPD. U.S. Br. 18. As the district court recognized, however, CIGNA did "request[] documents from and depos[e] the eight class members chosen by Plaintiffs" (Pet. App. 166a)—and that discovery, together with trial testimony, established that at least some of the class members understood exactly how their benefits were being calculated after CIGNA transitioned to the cash balance plan. *See, e.g.*, Tr. 84-85, 140-41 (testimony of class representative Gisela Broderick that she understood that the Plan did not provide for the "A+B" benefits formula later awarded by the district court). CIGNA's decision not to seek additional discovery was based on its position that the "*plan participant[s]* should be re-

quired to prove detrimental reliance before being entitled to benefits based on a flawed SPD" (Pet. App. 165a n.1 (emphasis added))—an understanding of the applicable burden of proof that was supported by the decisions of six circuits. *See, e.g., Stilner v. Beretta U.S.A. Corp.*, 74 F.3d 1473, 1478 (4th Cir. 1996) (en banc) ("an ERISA claimant must demonstrate that he either relied upon or was prejudiced by [the] representations" in the SPD); *Govoni*, 732 F.2d at 252 (same). The district court disagreed, and held that "*CIGNA* bears the burden of demonstrating harmless error" under the Second Circuit's "likely harm" standard. Pet. App. 167a (emphasis added).

The evidentiary record does not pose an obstacle to this Court's review of that legal determination. The answer to the question presented—whether a class-wide showing of "likely harm" is sufficient to permit recovery based on a conflict between an SPD and the plan—does not turn on whether, in fact, respondents demonstrated likely harm and CIGNA rebutted that showing. It turns on the legal principles governing the interpretation of ERISA. Moreover, if the Second Circuit's "likely harm" standard is correct (or if the lower courts should have applied the no-reliance-or-prejudice standard endorsed by the Third, Fifth, and Sixth Circuits), then this Court could affirm the decision below on the current record. If the Second Circuit was wrong, however, and should have required an individualized showing of reliance or prejudice, then the Court could examine respondents' evidence to determine whether they met their evidentiary burden (or remand the case for the lower courts to undertake that inquiry in the first instance). Under that reliance-or-prejudice standard, the burden of proof rests squarely on the

plaintiff, and a defendant could therefore prevail without coming forward with *any* evidence at all.

Finally, the government theorizes that, if "the SPD remedial issue were resolved in CIGNA's favor," the district court might order a "comparable" remedy based on a violation of a *different* provision of ERISA—Section 204(h). U.S. Br. 19. The government's prediction about what the district court "*might*" do on remand is sheer speculation. The district court has already determined, "in an exercise of its equitable powers," not to award additional benefits based on the Section 204(h) violation (Pet. App. 191a)—and it might well reinstate that conclusion on remand. Moreover, the possibility that the district court would revisit the Section 204(h) remedy in response to this Court's decision hardly justifies leaving in place a legally flawed SPD-based remedy and declining to provide the lower courts with urgently needed guidance on a question that has generated an acknowledged and intractable conflict among the circuits.

CONCLUSION

The petition for a writ of certiorari should be granted.

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June 7, 2010

AMICUS CURIAE BRIEF

No. 09-804

In the Supreme Court of the United States

CIGNA CORPORATION, ET AL., PETITIONERS

v.

JANICE C. AMARA, ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTION PRESENTED

Whether participants in an employee benefit plan covered by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.*, who make an unrebutted showing of likely harm from a discrepancy between the description of benefits in the summary plan description (SPD) or summary of material modifications (SMM) and the description in other plan documents may recover benefits as promised in the SPD or SMM.

TABLE OF CONTENTS

Page

Interest of the United States 1
Statement 1
Summary of argument 7
Argument:
Participants who show likely harm from a failure to abide by a summary plan description (SPD) are entitled to the benefits promised in the SPD unless the plan defendants establish that not adhering to the SPD was harmless 11
A. ERISA's text, contract and trust law, and ERISA's purposes support the "likely harm" approach 12
B. A detrimental reliance requirement would be inconsistent with ERISA's text, origins, and purposes 21
C. Participants may sue under ERISA Section 502(a)(1)(B) to recover benefits based on an SPD ... 27
D. The lower courts correctly applied the "likely harm" standard 31
Conclusion 33
Appendix – Statutory and regulatory provisions 1a

TABLE OF AUTHORITIES

Cases:

Aetna Health Inc. v. *Davila*, 542 U.S. 200 (2004) 14
Affiliated Ute Citizens v. *United States*, 406 U.S. 128 (1972) 25
Basic Inc. v. *Levinson*, 485 U.S. 224 (1988) 25
Basile v. *H&R Block*, 777 A.2d 95 (Pa. Super. Ct. 2001) 25

Cases—Continued: Page

Branch v. *G. Bernd Co.*, 955 F.2d 1574 (11th Cir. 1992) 26

Branch v. *White*, 239 A.2d 665 (N.J. Super. Ct. App. Div. 1968) 18

Bridge v. *Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2010) 25

Burke v. *Kodak Ret. Income Plan*, 336 F.3d 103 (2d Cir. 2003), cert. denied, 540 U.S. 1105 (2004) 6, 11, 20, 21

Burstein v. *Retirement Account Plan for Employees of Allegheny Health Educ. & Research Found.*, 334 F.3d 365 (3d Cir. 2003) 13, 16, 23, 24, 27

Callery v. *United States Life Ins. Co.*, 392 F.3d 401 (10th Cir. 2004), cert. denied, 546 U.S. 812 (2005) 30

Central Laborers' Pension Fund v. *Heinz*, 541 U.S. 739 (2004) 18

Communications Workers v. *AT&T Co.*, 40 F.3d 426 (D.C. Cir. 1994) 29

Conkright v. *Frommert*, 130 S. Ct. 1640 (2010) 20

Curtiss-Wright Corp. v. *Schoonejongen*, 514 U.S. 734 (1995) 12, 13, 19, 22, 24

Edmunds v. *Valley Circle Estates*, 20 Cal. Rptr. 2d 701 (Ct. App. 1993) 25

Firestone Tire & Rubber Co. v. *Bruch*, 489 U.S. 101 (1989) 12, 15, 26

Gould v. *Continental Coffee Co.*, 304 F. Supp. 1 (S.D.N.Y. 1969) 26

Govoni v. *Bricklayers, Masons & Plasterers Int'l Union, Local No. 5 Pension Fund*, 732 F.2d 250 (1st Cir. 1984) 32

Cases—Continued: Page

Gridley v. *Cleveland Pneumatic Co.*, 924 F.2d 1310 (3d Cir.), cert. denied, 501 U.S. 1232 (1991) 23

Heffner v. *Blue Cross & Blue Shield of Ala. Inc.*, 443 F.3d 1330 (11th Cir. 2006) 26

Heidgard v. *Olin Corp.*, 906 F.2d 903 (2d Cir. 1990) 15, 27

Izumi Seimitsu Kogyo Kabushiki Kaisha v. *United States Philips Corp.*, 510 U.S. 27 (1993) 28

Jobe v. *Medical Life Ins. Co.*, 598 F.3d 478 (8th Cir. 2010) 20

Kennedy v. *Plan Adm'r for DuPont Sav. & Inv. Plan*, 129 S. Ct. 865, 877 (2009) 12, 14, 21, 28

Kosty v. *Lewis*, 319 F.2d 744 (D.C. Cir. 1963), cert. denied, 375 U.S. 964 (1964) 27

Martin v. *Feilen*, 965 F.2d 660 (8th Cir. 1992), cert. denied, 506 U.S. 1054 (1993) 18

Massachusetts Mut. Life Ins. Co. v. *Russell*, 473 U.S. 134 (1985) 16

Mathews v. *Chevron Corp.*, 362 F.3d 1172 (9th Cir. 2004) 30

McDonald v. *Provident Indem. Life Ins. Corp.*, 60 F.3d 234 (5th Cir. 1995), cert. denied, 516 U.S. 1174 (1996) 18

Miller v. *Dictaphone Corp.*, 334 F. Supp. 840 (D. Ore. 1971) 26

Nechis v. *Oxford Health Plans, Inc.*, 421 F.3d 96 (2d Cir. 2005) 30

Nedd v. *United Mine Workers*, 556 F.2d 190 (3d Cir. 1977), cert. denied, 434 U.S. 1013 (1978) 18

Cases—Continued: Page

Pegram v. *Herdrich*, 530 U.S. 211 (2000) 22
Pierce v. *Security Trust Life Ins. Co.*, 979 F.2d 23 (4th Cir. 1992) 32
Pisciotta v. *Teledyne Indus., Inc.*, 91 F.3d 1326 (9th Cir. 1996) 27
Rhoton v. *Central States, Se. & Sw. Areas Pension Fund*, 717 F.2d 988 (6th Cir. 1983) 14
Schad v. *Stamford Health Sys., Inc.*, 358 Fed. Appx. 242 (2d Cir. 2009) 11
Silverman v. *Mutual Benefit Life Ins. Co.*, 138 F.3d 98 (2d Cir.), cert. denied, 525 U.S. 876 (1998) 18
Smith v. *Sydnor*, 184 F.3d 356 (4th Cir. 1999), cert. denied, 528 U.S. 1116 (2000) 29
Sullivan v. *Louisiana*, 508 U.S. 275 (1993) 28
Unum Life Ins. Co. of Am. v. *Ward*, 526 U.S. 358 (1999) 28, 29
Varity Corp. v. *Howe*, 516 U.S. 489 (1996) 16, 28, 30
Voigt v. *South Side Laundry & Dry Cleaners, Inc.*, 128 N.W.2d 411 (Wis. 1964) 26
Washington v. *Murphy Oil USA, Inc.*, 497 F.3d 453 (5th Cir. 2007) 16
Watts v. *Cumberland County Hosp. Sys. Inc.*, 343 S.E.2d 879 (N.C. 1986) 25

Statutes and regulations:

Employee Retirement Income Security Act of 1974, Tit. I, 29 U.S.C. 1001 *et seq.* 1
29 U.S.C. 1001(b) 12
29 U.S.C. 1002(1)-(3) 22

Statutes and regulations—Continued: Page

29 U.S.C. 1002(2)(A) 2
29 U.S.C. 1002(3) 1
29 U.S.C. 1022 ..... 8, 15, 20, 23
29 U.S.C. 1022(a) 2, 14, 17, 19, 22
29 U.S.C. 1022(b) 14
29 U.S.C. 1024(b)(1) 2, 13, 23
29 U.S.C. 1024(b)(2) 12, 13, 23
29 U.S.C. 1024(b)(4) 12, 13, 22, 23
29 U.S.C. 1029(c) 22
29 U.S.C. 1054(b)(5)(B)(iii) 3, 33
29 U.S.C. 1054(g) 3
29 U.S.C. 1054(h) 4
29 U.S.C. 1102(a)(1) 13, 22
29 U.S.C. 1102(b)(3) 24
29 U.S.C. 1104(a)(1)(D) ..... *passim*
29 U.S.C. 1132(a)(1)(B)
(§ 502(a)(1)(B)) 10, 21, 27, 28, 29. 30
29 U.S.C. 1132(a)(3) (§ 502(a)(3)) 10, 27, 29, 30
Pension Protection Act of 2006, Pub. L. No. 109-280,
§ 701(a), 120 Stat. 981 (29 U.S.C. 1054(b)(5)(B)(iii)) 3
29 C.F.R.:
Section 2520.102-2 20
Section 2520.102-2(b) 14
Section 2560.503-1 30

Miscellaneous: Page

1 John Alan Appleman & Jean Appleman, *Insurance Law & Practice* (1981) 17, 20

George Gleason Bogert & George Taylor Bogert, *The Law of Trusts and Trustees* (rev. 2d ed. 1995) 18, 25

H.R. Rep. No. 533, 93d Cong., 1st Sess. (1973) 27

Richard A. Lord, *Williston on Contracts* (4th ed.):

Vol. 11 (1999) 16, 20, 27

Vol. 16 (2000) 17

1A Steven Plitt et al., *Couch on Insurance* (3d ed. 2005) 17

2 Restatement (Second) of Contracts (1981) 16

1 Restatement (Second) of Trusts (1959) 18, 25

S. Rep. No. 127, 93d Cong., 1st Sess. (1973) 16, 27

Peter J. Weidenbeck, *ERISA in the Courts* (2008) 13

In the Supreme Court of the United States

No. 09-804

CIGNA CORPORATION, ET AL., PETITIONERS

v.

JANICE C. AMARA, ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

INTEREST OF THE UNITED STATES

This case was brought under Title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, which the Secretary of Labor has primary authority for administering. At the Court's invitation, the United States filed an amicus brief at the petition stage.

STATEMENT

1. ERISA protects the interests of participants and their beneficiaries in "employee benefits plan[s]," which include "welfare" and "pension benefit plan[s]." 29 U.S.C. 1002(3). A "pension benefit plan" is "any plan, fund, or program * * * established or maintained by

an employer or by an employee organization * * * to the extent that * * * such plan, fund, or program * * * (i) provides retirement income to employees, or (ii) results in a deferral of income to employees for periods extending to the termination of covered employment or beyond." 29 U.S.C. 1002(2)(A).

ERISA requires the plan administrator to furnish every participant and beneficiary with a copy of a summary plan description (SPD) and, where applicable, a summary of material modifications (SMM) to the plan. 29 U.S.C. 1024(b)(1). The SPD must be "sufficiently accurate and comprehensive to reasonably apprise * * * participants and beneficiaries of their rights and obligations under the plan." 29 U.S.C. 1022(a). The SMM must describe "any material modification in the terms of the plan." *Ibid.* The SPD and SMM must "be written in a manner calculated to be understood by the average plan participant." *Ibid.*

2. During 1997 and 1998, CIGNA Corporation converted its traditional defined benefit pension plan to a cash balance plan. Pet. App. 16a-17a. In a traditional defined benefit plan, each employee's benefit is generally expressed as an annuity beginning at normal retirement age and calculated based on his compensation and years of service. *Id.* at 9a. In a cash balance plan, each employee's benefit is generally expressed as the amount in a hypothetical account. The account balance increases over time with hypothetical contributions—pay credits, which are based on a percentage of the employee's compensation, and interest credits, which are based on application of a specified interest rate to the account balance. *Id.* at 12a.

In converting to the cash balance plan, CIGNA used a transition method called the "greater of A or B." To

implement that method, CIGNA modified the formal written instruments establishing the plan by first freezing the benefits employees had accrued under the traditional defined benefit formula (Part A) and then providing that, going forward, employees would receive the greater of those frozen benefits (which ERISA prohibited CIGNA from reducing, 29 U.S.C. 1054(g)) or the benefits under a new cash balance formula (Part B). Pet. App. 13a-14a, 16a-22a. Under this approach, a participant would not accrue additional benefits under Part B until the balance in his hypothetical account exceeded his accrued benefits under Part A. *Id.* at 13a-14a, 22a-25a. Depending on the assumptions used in converting the plan, it could take years for an employee's Part B benefit to catch up with, or "wear away," his accrued Part A benefit. During those "wear away" periods, the employee would work without earning any additional benefits. *Id.* at 25a.

An alternative transition method, called "A plus B," would not have included "wear away." Pet. App. 13a. Although ERISA permitted the "greater of A or B" approach at the time of CIGNA's conversion, ERISA no longer permits that approach. For conversions after June 29, 2005, post-conversion benefits cannot be less than those provided by the "A plus B" approach. Pension Protection Act of 2006, Pub. L. No. 109-280, § 701(a), 120 Stat. 981 (29 U.S.C. 1054(b)(5)(B)(iii)).

CIGNA implemented the "greater of A or B" approach by creating an opening balance for each participant under Part B that was based on his accrued benefits under Part A but excluded the value of some of those benefits, such as early retirement benefits. Pet. App. 19a & n.4. Because of that decision, and CIGNA's choice of discount rates and mortality risk adjustments, a par-

ticipant's Part B opening balance was frequently much less than the present value of his Part A accrued benefit. *Id.* at 23a, 121a-123a. For example, respondent Amara's opening balance was less than half her accrued benefit. *Id.* at 23a. As a result, many employees experienced extended "wear away" periods, sometimes lasting for years. *Id.* at 23a-25a. Indeed some employees were never able to "wear away" the difference between their frozen Part A benefits and their Part B benefits. *Id.* at 25a-26a, 125a-126a.

CIGNA was aware that employees would experience "wear away" under the modified formal plan instruments but did not inform employees about that possibility. Pet. App. 29a, 118a-119a. Instead, CIGNA distributed documents indicating that employees would accrue additional benefits without "wear away." *Id.* at 126a-127a. In a November 1997 newsletter, CIGNA informed employees that the conversion would "significantly enhance its retirement program," J.A. 990a, and that the amended plan would provide "benefit growth throughout [each employee's] career," J.A. 993a.[1]

In December 1997, CIGNA sent each participant a retirement kit, which CIGNA later identified as the SMM required by ERISA. Pet. App. 33a, 95a. The retirement kit also described the changes to CIGNA's retirement program as enhancements. J.A. 947a. Although the kit provided details about the calculation of Part B opening balances, it did not describe all of the

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[1] CIGNA later identified that newsletter as the notice required by 29 U.S.C. 1054(h), which mandates advance notice of an amendment to a defined benefit pension plan that provides for a significant reduction in the rate of future benefit accrual. Pet. App. 95a. The district court found that the newsletter did not comply with that requirement, *id.* at 95a-114a, but that ruling is not at issue here.

discounts applied in calculating those balances. J.A. 941a-943a. In addition, it stated that "[e]ach dollar's worth of credits [to a participant's Part B account] is a dollar of retirement benefits payable to [the participant] after [he is] vested," J.A. 963a, and that participants "will see the growth in [their] total retirement benefits from CIGNA every year," J.A. 952a.

In October 1998 and September 1999, CIGNA issued SPDs for the new plan. Pet. App. 39a. The SPDs stated that a participant's opening balance under Part B "was equal to the lump sum value of the pension benefit [the participant] earned" under Part A. J.A. 906a, 928a. The SPDs further stated that "[e]ach dollar's worth of credit is a dollar of retirement benefits payable to [participants] after [they] are vested," *ibid.*, and reported that a participant's account would "continue to grow every year [the participant was] with CIGNA," J.A. 904a, 927a. The SPDs thus described an "A plus B," rather than "greater of A or B," approach.

When CIGNA furnished the SPDs to participants, it was aware that 92% of employees responding to a December 1997 survey had stated that they "thoroughly read the retirement communications [they] received." J.A. 895a. CIGNA was also aware that employees lacked full information about the provisions in the formal plan instruments, including "wear away," yet CIGNA chose not to inform employees about them. Pet. App. 110a-113a. CIGNA wanted to avoid employee protests, which had caused other employers to abandon or scale back similar conversions. *Id.* at 113a-114a. CIGNA's strategy successfully avoided organized employee opposition. *Id.* at 114a.

3. In 2001, respondents brought a class action lawsuit against petitioners in federal district court. Pet.

App. 41a. As relevant here, respondents alleged that petitioners had failed to comply with ERISA's SPD and SMM provisions. *Id.* at 94a.

In February 2008, after an extensive bench trial, the district court determined that petitioners had violated those requirements. Pet. App. 5a-159a. The court reasoned that "wear away" was a material fact that the SMM and SPDs failed to disclose despite petitioners' awareness that many employees would experience it under the formal plan instruments as amended. *Id.* at 118a-126a. The court also found that the SPDs and SMM affirmatively led participants to believe that all benefits accrued under Part A, including early retirement benefits, would be included in determining opening account balances under Part B and that employees would steadily earn additional benefits without "wear away." *Id.* at 126a-131a.

The court rejected petitioners' argument that respondents were not entitled to relief because they failed to demonstrate injury. Pet. App. 131a-137a. The court noted that, under circuit precedent, participants may recover benefits based on a deficient SPD if they establish likely prejudice or harm. *Id.* at 131a-133a (citing *Burke* v. *Kodak Ret. Income Plan*, 336 F.3d 103 (2d Cir. 2003), cert. denied, 540 U.S. 1105 (2004)). If a participant makes that showing, the court explained, "the employer may rebut it through evidence that the deficient SPD was in effect a harmless error." *Id.* at 132a (quoting *Burke*, 336 F.3d at 113). The court found that respondents had shown likely harm because the SPDs and SMM "'likely, and quite reasonably, led plan participants to believe' that wear away was not a likely result of the transition" to the new plan. *Id.* at 136a (citation omitted). In addition, the court observed, the SPDs and

SMM deprived employees of the opportunity to take timely action in response to the conversion, including protesting when the new plan was implemented. *Id.* at 137a. The court further found that petitioners had not established harmless error, rejecting petitioners' contention that other materials distributed to participants made clear that the cash balance plan would include "wear away." *Id.* at 133a.

In June 2008, the court issued an opinion addressing the appropriate remedy. Pet. App. 160a-221a. The court concluded that no issues remained regarding whether individual participants were harmed. *Id.* at 162a-169a. It rejected as contrary to Second Circuit precedent petitioners' argument that each participant must individually prove detrimental reliance. *Id.* at 165a n.1. The court also refused to afford petitioners further opportunity to prove harmless error because they had failed to take advantage of earlier opportunities. *Id.* at 166a. In particular, the court noted, petitioners had declined to engage in discovery to determine whether class members had actual knowledge of "wear away," and petitioners had failed to call any participants as witnesses at trial. *Ibid.* Accordingly, the court ordered petitioners to provide benefits using the "A plus B" approach, which accords with the promises in the SPDs and SMM that the plan would not include "wear away." *Id.* at 194a-201a.

4. The court of appeals affirmed in an unpublished order, Pet. App. 1a-4a, relying on "substantially the reasons stated" by the district court, *id.* at 4a.

SUMMARY OF ARGUMENT

The courts below held that ERISA plan participants who show likely harm from a failure to abide by an SPD

are entitled to the benefits promised by the SPD unless the plan and the administrator establish that not adhering to the SPD was harmless. Under that rule, when, as in this case, the SPD clearly promises materially greater benefits than the more formal plan instruments, the SPD controls, unless the defendants show that the participant did not reasonably expect to receive the more favorable benefits. That rule is correct.

A. ERISA requires fiduciaries to discharge their duties in accordance with the documents governing the plan insofar as they are consistent with ERISA. 29 U.S.C. 1104(a)(1)(D). The SPD is a governing plan document, and a benefits determination is a fiduciary decision. Accordingly, an administrator must follow the SPD when deciding benefits claims, and an administrator would violate Section 1104(a)(1)(D) by interpreting the plan to deny or restrict benefits promised in the SPD. Although Section 1104(a)(1)(D) also requires the administrator to adhere to other plan documents, read together with ERISA's SPD requirements, it indicates that the SPD ordinarily overrides other documents if they conflict. Section 1104(a)(1)(D) provides that fiduciaries should adhere to plan documents only when consistent with ERISA's requirements, and giving effect to documents that deny benefits that the SPD states the plan provides would be inconsistent with ERISA's SPD provisions, which require the SPD accurately to reflect plan terms, 29 U.S.C. 1022. Giving primacy to more favorable terms in the SPD, except when a participant does not reasonably expect those terms to govern, is also consistent with the SPD's statutory role as the primary mechanism for apprising participants of their rights under the plan.

That approach also best balances the contract and trust law principles underlying ERISA. Under contract law, the SPD should control over less accessible underlying documents, whether or not participants show harm or reliance. In the analogous situation of group insurance policies, the statutorily required certificate of insurance summarizing the underlying policy generally prevails over terms in the policy that are less favorable to participants. Trust law, however, ordinarily permits recovery for breach of trust only when beneficiaries are harmed. Trust law supports the burden-shifting approach utilized by the courts below because a breaching fiduciary generally has the burden of proving lack of harm once the beneficiary makes a prima facie case.

The "likely harm" approach also furthers ERISA's goal of protecting employees' justified expectations of receiving the benefits promised to them, because employees reasonably expect to receive the benefits promised in the SPD unless they know about less favorable terms in other documents and should reasonably expect them to govern. This framework also advances ERISA's goal of ensuring that participants understand their rights and obligations under the plan by encouraging employers and administrators to comply with ERISA's command that the SPD accurately and comprehensively state those rights and obligations. At the same time, this approach avoids unduly discouraging plan formation or undermining plan solvency by precluding participants from receiving windfall recoveries if the defendants can show that the participants were not actually harmed by the discrepancy between the SPD and other documents.

B. Petitioners' contention that participants must prove detrimental reliance in order to recover benefits promised in the SPD is inconsistent with the SPD's sta-

tus as a governing plan document. Contrary to petitioners' contentions, the formal plan instrument is not itself the plan, and an SPD that conflicts with other plan documents is not an invalid plan amendment. The plan is a set of rules that define participants' rights to benefits, and the SPD is the authoritative statement of those rules for participants. A detrimental reliance requirement would also be contrary to the contract and trust law underpinnings of ERISA and would undermine its purposes.

C. This Court should not address petitioners' contention that an action for benefits based on the SPD can be brought only under ERISA Section 502(a)(3), 29 U.S.C. 1132(a)(3). Petitioners did not raise that issue in the court of appeals or their certiorari petition, and it is not fairly included in the question presented. If the Court nonetheless addresses the issue, it should conclude that an action to recover benefits based on the SPD is properly brought under ERISA Section 502(a)(1)(B), 29 U.S.C. 1132(a)(1)(B). That section authorizes actions to recover benefits under the terms of a plan, to enforce rights under the terms of a plan, or to clarify rights to future benefits under the terms of a plan. An action for benefits based on an SPD's status as a governing plan document falls within that authorization and is consistent with ERISA's structure and purposes.

D. The lower courts properly applied the "likely harm" standard. Although the formal instruments establishing the cash balance plan provided for "wear away" periods during which some employees would work for years without accruing additional benefits, the SPDs and SMM indicated that all participants would accrue additional benefits continuously under the new plan, without "wear away." The SPDs and SMM likely led

reasonable participants to expect that the plan would not include "wear away." And petitioners failed to establish that any employee was aware of the less favorable terms in the formal plan instruments or did not reasonably expect to receive the benefits promised in the SPDs and SMM.

ARGUMENT

PARTICIPANTS WHO SHOW LIKELY HARM FROM A FAILURE TO ABIDE BY A SUMMARY PLAN DESCRIPTION (SPD) ARE ENTITLED TO THE BENEFITS PROMISED IN THE SPD UNLESS THE PLAN DEFENDANTS ESTABLISH THAT NOT ADHERING TO THE SPD WAS HARMLESS

Under the rule applied by the courts below, when the SPD's description of plan terms conflicts with the description in another plan document, participants who show likely harm from a failure to adhere to the SPD are entitled to the benefits that it promised, unless the plan or its administrator demonstrates that failing to follow the SPD was harmless. A participant can carry that initial burden by showing that the SPD likely led a reasonable participant to expect materially more favorable benefits than those described in the other document. See *Burke* v. *Kodak Ret. Income Plan*, 336 F.3d 103, 114 (2d Cir. 2003), cert. denied, 540 U.S. 1105 (2004); Pet. App. 136a. The plan defendants can then establish harmlessness by showing that, despite the SPD, a reasonable person in the participant's position would not have expected to receive the more favorable benefits—for example, because he was aware of the other, less favorable plan terms and should have expected them to govern. See *ibid.*; *e.g.*, *Schad* v. *Stamford Health Sys., Inc.*, 358 Fed. Appx. 242, 244 (2d Cir. 2009). Thus, where, as here, the SPD clearly promised materially

greater benefits than the more formal plan instruments, the SPD controls unless the defendants show that disregarding the SPD would cause no loss because the participant did not reasonably expect to receive the benefits the SPD promised. That rule is consistent with ERISA's text, its contract and trust law underpinnings, and its purposes.

A. ERISA's Text, Contract And Trust Law, And ERISA's Purposes Support The "Likely Harm" Approach

1. ERISA was enacted "to protect * * * the interests of participants in employee benefit plans and their beneficiaries," 29 U.S.C. 1001(b), and to ensure that they receive their "contractually defined benefits." *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U.S. 101, 113 (1989) (citation omitted). To achieve those goals, ERISA imposes various obligations on plan administrators and other fiduciaries, including that they "discharge [their] duties with respect to a plan * * * in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [ERISA]. 29 U.S.C. 1104(a)(1)(D).

As that provision reflects, multiple "documents and instruments" typically govern a plan. The SPD (and the closely-related SMM) are among those governing documents. See *Kennedy* v. *Plan Adm'r for DuPont Sav. & Inv. Plan*, 129 S. Ct. 865, 877 (2009) (identifying the SPD as one of the "documents and instruments governing the plan"); *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U.S. 73, 84 (1995) (explaining that 29 U.S.C. 1024(b)(2) and (4), which require administrators to make available the SPD and certain other documents, ensure

access to the "governing plan documents"); U.S. Invitation Br. 11 (citing court of appeals cases).

Indeed, the SPD is, in significant respects, the paramount plan document. It is the only document that all participants are guaranteed to receive on a regular basis, and ERISA "contemplates that [it] will be an employee's primary source of information regarding employment benefits." *Burstein* v. *Retirement Account Plan for Employees of Allegheny Health Educ. & Research Found.*, 334 F.3d 365, 378 (3d Cir. 2003) (emphasis and citation omitted). The SPD (and, if applicable, the SMM) are the only plan documents that must be provided to participants automatically and without charge. 29 U.S.C. 1024(b)(1). Other documents—including the formal "written instrument" under which the plan is "established," 29 U.S.C. 1102(a)(1)—need only be made available upon request, and the administrator may charge for providing copies. 29 U.S.C. 1024(b)(2) and (4). For that reason, the SPD is frequently the only document describing plan terms that participants ever receive. Peter J. Weidenbeck, *ERISA in the Courts* 84 (2008). The SPD, rather than the formal written instrument, is thus the primary mechanism for "communicat[ing] to beneficiaries the essential information about the plan" and achieving "one of ERISA's central goals"—ensuring that participants and beneficiaries accurately understand their rights and obligations. *Curtiss-Wright*, 514 U.S. at 83.

The primacy of the SPD is underscored by the statutory requirements that it be "sufficiently accurate and comprehensive to reasonably apprise * * * participants and beneficiaries of their rights and obligations under the plan" and "be written in a manner calculated to be understood by the average plan participant."

29 U.S.C. 1022(a). Thus, the SPD must provide understandable notice of, among other things, "the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; [and] circumstances which may result in disqualification, ineligibility, or denial or loss of benefits." 29 U.S.C. 1022(b). Department of Labor (DOL) regulations reinforce the SPD's critical role, mandating that it "must not have the effect [of] misleading, misinforming or failing to inform participants" and that "[a]ny description of exceptions, limitations, reductions, and other restrictions of plan benefits shall not be minimized." 29 C.F.R. 2520.102-2(b).

Because the SPD is a governing plan document, the directive in 29 U.S.C. 1104(a)(1)(D) that fiduciaries act in accordance with plan documents requires plan administrators to adhere to the SPD. ERISA "provides no exemption from this duty when it comes time to pay benefits," *Kennedy*, 129 S. Ct. at 875, because a benefits determination is a fiduciary act, *Aetna Health Inc.* v. *Davila*, 542 U.S. 200, 218 (2004). Thus, an administrator must follow the terms of the SPD when deciding a benefits claim, see *Kennedy*, 129 S. Ct. at 875-877, and the administrator would violate Section 1104(a)(1)(D) and abuse its discretion by interpreting the plan to deny or restrict benefits to which the SPD states participants are entitled. *E.g.*, *Rhoton* v. *Central States, Se. & Sw. Areas Pension Fund*, 717 F.2d 988, 989-991 (6th Cir. 1983).

Section 1104(a)(1)(D) of course also requires administrators to adhere to other governing documents, including the formal written instrument establishing the plan. While nothing in ERISA expressly addresses whether, or in what circumstances, the SPD controls

over other documents if there is a clear conflict, Section 1104(a)(1)(D) and ERISA's SPD provisions together indicate that the SPD ordinarily should prevail over less favorable terms in other documents. Section 1104(a)(1)(D) requires fiduciaries to act in accordance with plan documents only "insofar as" those documents "are consistent with" ERISA's requirements. 29 U.S.C. 1104(a)(1)(D). Giving effect to other documents that restrict or deny benefits that the SPD describes the plan as providing would not be "consistent with" ERISA's SPD provisions, which require that the SPD accurately and comprehensively describe benefits under the plan. 29 U.S.C. 1022. By contrast, interpreting the plan in accordance with the SPD, rather than other conflicting documents, avoids a violation of the SPD provisions and accords with Section 1104(a)(1)(D)'s proviso that fiduciaries may not follow documents that are inconsistent with ERISA's requirements.

Giving primacy to more favorable terms in the SPD (except when a participant did not reasonably expect those terms to govern) also accords with the SPD's statutory role as the primary mechanism for apprising participants of their rights under the plan. Indeed, allowing less favorable terms in the less accessible and more complex formal instrument to "supersede the terms of the [SPD] would defeat the purpose of providing the employees with summaries." *Heidgard* v. *Olin Corp.*, 906 F.2d 903, 908 (2d Cir. 1990).

2. To the extent ERISA's text and structure do not resolve when a participant may recover benefits based on an SPD that conflicts with other plan documents, the Court should consider contract and trust law principles. Contract law is relevant because benefits protected by ERISA are "contractually defined." *Firestone*, 489 U.S.

at 113 (quoting *Massachusetts Mutual Life Ins. Co.* v. *Russell*, 473 U.S. 134, 148 (1985)). Trust law is relevant because it informs interpretation of ERISA's fiduciary duties, *Varity Corp.* v. *Howe*, 516 U.S. 489, 497 (1996), including the duty to adhere to plan documents. The approach adopted by the courts below appropriately balances the relevant contract and trust law principles.

a. Contract law suggests that courts should give effect to the SPD without any inquiry into harm or reliance. A party to a contract need not show harm or reliance in order to enforce the contract's terms. *Washington* v. *Murphy Oil USA, Inc.*, 497 F.3d 453, 458-459 (5th Cir. 2007); *Burstein*, 334 F.3d at 381. And, under established principles of contract interpretation, the terms in the SPD embody the terms of the plan, notwithstanding any ambiguity produced by conflicting statements in other documents. When the terms of a written contract are ambiguous, courts give them the meaning that the promisor should reasonably have expected the other party to give them. 11 Richard A. Lord, *Williston on Contracts* § 31:2, at 266 (4th ed. 1999) (*Williston*); *id.* § 31:11, at 352-353; see also 2 Restatement (Second) of Contracts § 201(2), at 83 (1981). Because the SPD is the only plan document that all participants must receive, and ERISA requires that it accurately and comprehensively describe the plan's terms, an employer should reasonably expect that employees will understand the SPD as accurately embodying those terms. See also 11 *Williston* § 30:20, at 219-220 (contracts are interpreted in conformity with applicable federal law).

That approach appropriately reflects the basic fact, recognized by Congress in enacting ERISA, see, *e.g.*, S. Rep. No. 127, 93d Cong., 1st Sess. 3 (1973) (*Senate Report*), that pension benefits are part of the compensa-

tion offered by employers for employees' services. Because ERISA requires the SPD accurately to reflect those benefits, employees are ordinarily entitled to receive the compensation promised by the SPD in return for their services, just as they are entitled to receive the wages the employer has promised. It is therefore fair to give effect to the SPD unless the employer establishes that the employee should have understood that his compensation would actually be governed by other, less favorable terms.

Courts generally apply a similar rule in the analogous situation of group insurance policies. Just as ERISA requires participants to receive SPDs that "reasonably apprise" them of their rights and obligations under the plan, 29 U.S.C. 1022(a), state statutes often require insurance companies to provide group policy participants with certificates of insurance that "apprise" them "of the rights [they] may expect and the obligations [they] assume[]." 1 John Alan Appleman & Jean Appleman, *Insurance Law & Practice* § 46, at 155-156 (rev. 1981) (*Appleman*). Under the prevailing rule, when the certificate promises more favorable benefits than the underlying policy, participants are entitled to the benefits described in the certificate. *Ibid.*; 16 *Williston* § 49:26, at 139-140 (4th ed. 2000); 1A Steven Platt et al., *Couch on Insurance* § 8:19, at 8-48 (3d ed. 2005).

b. Contract law is not, however, the sole guide for interpreting ERISA. Trust law also informs ERISA's interpretation, and it supports the approach adopted by the courts below: although a participant who has been denied benefits promised by the SPD is presumptively entitled to those benefits, the plan defendants may rebut that presumption by showing that the participant did not

reasonably expect to receive the benefits and therefore would suffer no loss from the failure to provide them.

The prevailing rule under trust law is that when a beneficiary shows a breach of trust and a prima facie case of loss resulting from the breach, the burden shifts to the trustee to prove that any loss is not attributable to the breach. See George Gleason Bogert & George Taylor Bogert, *The Law of Trusts and Trustees* § 871, at 156-157 (rev. 2d ed. 1995) (*Bogert*); 1 Restatement (Second) of Trusts §§ 205 cmt. f at 460 (1959) (Restatement); *id.* § 212(4) & cmt. e at 484, 486. Courts applied that rule in pension cases arising under pre-ERISA law, including in determining whether employees were entitled to benefits notwithstanding their failure to comply with eligibility requirements that plan trustees failed to disclose. See *Nedd* v. *United Mine Workers*, 556 F.2d 190, 211 (3d Cir. 1977); *Branch* v. *White*, 239 A.2d 665, 674 (N.J. Super. Ct. App. Div. 1968). Most courts of appeals also apply that rule to breach of fiduciary duty claims under ERISA. See, *e.g.*, *McDonald* v. *Provident Indem. Life Ins. Co.*, 60 F.3d 234, 237 (5th Cir. 1995), cert. denied, 516 U.S. 1174 (1996); *Martin* v. *Feilen*, 965 F.2d 660, 671 (8th Cir. 1992), cert. denied, 506 U.S. 1054 (1993); but see, *e.g.*, *Silverman* v. *Mutual Benefit Life Ins. Co.*, 138 F.3d 98, 104 (2d Cir.), cert. denied, 525 U.S. 876 (1998). The framework applied by the courts below similarly requires the plan defendants to show there was no actual loss of expected benefits if the participant first shows that the SPD promised the claimed benefits.

3. That rule also furthers ERISA's purposes, including its primary goal of "protecting employees' justified expectations of receiving the benefits their employers promise them." *Central Laborers' Pension Fund* v. *Heinz*, 541 U.S. 739, 743 (2004). That goal is advanced

by giving an employee the benefits clearly promised in the SPD unless the plan defendants establish that the employee did not reasonably expect to receive those benefits. The SPD is the only plan document that every employee receives, and ERISA requires that it describe the plan's benefits as accurately and comprehensively as necessary to inform employees of their rights. An employee is therefore justified in expecting to receive the benefits described in the SPD unless he knew about less favorable terms in other documents and reasonably should have expected them to govern.

Another important goal of ERISA is ensuring that participants accurately understand their rights and obligations under the plan. *Curtiss-Wright*, 514 U.S. at 83. The approach followed here advances that goal by encouraging employers and plan administrators to ensure that SPDs are, as ERISA commands, "sufficiently accurate and comprehensive to reasonably apprise * * * participants and beneficiaries of their rights and obligations under the plan." 29 U.S.C. 1022(a).

At the same time, this approach accommodates employers' interests, allowing them to defeat a claim to benefits by showing that the participant should reasonably have expected that less favorable terms in other documents would govern. This framework thus avoids the possibility that such participants will receive windfalls at the expense of plans and sponsoring employers. It thereby appropriately takes into account the importance that ERISA places on maintaining plan solvency and not unduly discouraging employers from offering

ERISA plans. See *Conkright* v. *Frommert*, 130 S. Ct. 1640, 1649 (2010).[2]

4. The "likely harm" approach also reflects a sensible allocation of the burden of proof. ERISA's SPD provisions and DOL's regulations require "an SPD that is accurate, comprehensible, and clear regarding restrictions on eligibility for benefits." *Burke*, 336 F.3d at 113; 29 U.S.C. 1022; 29 C.F.R. 2520.102-2. An affected "employee is powerless to affect the drafting" of the SPD and "less equipped" than the employer or the plan "to absorb the financial hardship of the employer's errors." *Burke*, 336 F.3d at 113.

Moreover, it is reasonable to presume that employees expect to receive the benefits promised in the SPD because the SPD is generally the only plan document that employees see, and ERISA requires that it accurately reflect their promised benefits. Yet an employee may have significant difficulty proving that he relied on the SPD in forming an expectation about his pension benefits as part of the total compensation for his services. Many participants rely at least in part on oral

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[2] Petitioners incorrectly contend (Br. 19) that if the SPD ordinarily trumps other documents when its terms are more favorable to employees, the SPD must also supersede those documents when its terms are less favorable. Courts have rejected that proposition because it would undermine ERISA's SPD requirements by effectively rewarding employers for permitting discrepancies between the SPD and other expressions of plan terms. See, *e.g.*, *Jobe* v. *Medical Life Ins. Co.*, 598 F.3d 478, 483 (8th Cir. 2010). Permitting the SPD to control when other documents are more favorable to employees would also be inconsistent with the contract law principle that ambiguities in a contract are construed against the drafter, 11 *Williston* § 32:12, at 471-476, and with the treatment of certificates of insurance, which generally do not control over more generous terms in the underlying policy, *Appleman* § 46, at 158-159.

representations and discussions with coworkers for information about the plan. See *Burke*, 336 F.3d at 113. As a result, representations about benefits made in an SPD frequently propagate throughout the workplace, even among those who never read the SPD itself. An employee would therefore often have difficulty establishing that the SPD was the source of his understanding about plan benefits. And he would have equal, if not greater, difficulty proving that he was unaware of divergent descriptions of benefits in other documents. Those difficulties of proof would likely be particularly severe in large workplaces and when benefit suits are litigated several years after dissemination of the relevant documents (situations that, as this case illustrates, are not uncommon).

B. A Detrimental Reliance Requirement Would Be Inconsistent With ERISA's Text, Origins, And Purposes

1. Petitioners' contention that participants may recover benefits promised in the SPD only if each affirmatively proves actual reliance on it to his detriment is inconsistent with the statutory scheme. As described above, the SPD is a governing plan document that sets out the plan's terms. Participants need not prove that they relied on plan documents to establish their right to benefits. On the contrary, 29 U.S.C. 1104(a)(1)(D) requires administrators to pay benefits in accordance with the plan documents, and Section 502(a)(1)(B) of ERISA "reinforces th[at] directive" by giving participants a cause of action "to recover benefits due to [them] under the terms of [their] plan." *Kennedy*, 129 S. Ct. at 875 (quoting 29 U.S.C. 1132(a)(1)(B)). A detrimental reli-

ance requirement cannot be squared with those statutory provisions.[3]

Although ERISA requires that a plan be "established and maintained pursuant to a written instrument," 29 U.S.C. 1102(a)(1), petitioners are incorrect in contending (Br. 14-15) that the "plan" consists exclusively of that document. ERISA does not define the term "plan" except in a circular manner. See 29 U.S.C. 1002(1)-(3). As this Court has explained, a "plan" is not any single document but a "scheme[,] decided upon in advance," that "comprises a set of rules that define the rights of a beneficiary and provide for their enforcement." *Pegram* v. *Herdrich*, 530 U.S. 211, 223 (2000).[4] ERISA recognizes that those rules are often described in multiple "documents and instruments," 29 U.S.C. 1104(a)(1)(D); see 29 U.S.C. 1024(b)(2) and (4). But ERISA requires the SPD to be the authoritative statement of the plan's terms for participants—mandating that it accurately describe participants' rights and obli-

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[3] Petitioners argue (Br. 25) that reliance is required because the SPD's purpose is to "apprise" participants of their rights under the plan. To the contrary, the fact that 29 U.S.C. 1022(a) requires the SPD to be "sufficiently accurate and comprehensive to reasonably apprise" participants of their rights underscores the centrality of the SPD as a plan document and indicates that participants therefore can reasonably expect to receive the benefits it promises. Moreover, other plan documents, including the formal plan instrument, also serve an informational purpose when a participant gains access to them. *Curtiss-Wright*, 514 U.S. at 83.

[4] The statutory provisions on which petitioners themselves rely (Br. 15) indicate that the "plan" is distinct from the "written instrument" required by 29 U.S.C. 1102(a)(1). Those provisions describe that "instrument" not as the plan itself but as a document "pursuant to" which the plan is "established and maintained," *ibid.*, or "under which the plan was established or is operated," 29 U.S.C. 1024(b)(2); see 29 U.S.C. 1029(c).

gations, be understandable to the average participant, and be provided without request or charge to every participant. 29 U.S.C. 1022, 1024(b)(1). Thus, if any single document embodies the plan in terms known to all parties, that document is the SPD, not the formal plan instrument.[5]

Petitioners also mistakenly assert that the SPD cannot be a plan document because ERISA "assigns the responsibility for drafting" the SPD to the plan administrator rather than the sponsoring employer. Pet. 15-16. ERISA does not assign "drafting" of the SPD to the administrator. ERISA requires the administrator to "furnish * * * a copy of the [SPD] to each participant," 29 U.S.C. 1024(b)(1), just as ERISA requires the administrator to "furnish a copy" of the "other instruments under which the plan is established or operated" to any participant upon request, 29 U.S.C. 1024(b)(4). ERISA does not specify who determines the content of the SPD and does not preclude the employer from doing so or excuse the employer from monitoring what the administrator does.

Because the SPD is a governing plan document, petitioners err (Br. 16-19) in equating an SPD that conflicts with other documents to an unauthorized and invalid plan amendment. *Curtiss-Wright* is not to the contrary. In *Curtiss-Wright*, the court of appeals held that a revision to an SPD that purported to terminate participants'

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[5] The only case cited by petitioners (Br. 14) stating that the SPD is not a plan document is *Gridley* v. *Cleveland Pneumatic Co.*, 924 F.2d 1310 (3d Cir.) (Alito, J.), cert. denied, 501 U.S. 1232 (1991). The Third Circuit has made clear, however, that those statements in *Gridley* were dicta and that it views the SPD as an authoritative statement of plan terms that trumps less favorable descriptions in other documents. *Burstein*, 334 F.3d at 377.

health benefits was an invalid amendment because neither the SPD nor the other plan documents contained an amendment procedure. 514 U.S. at 75-77. This Court reversed, agreeing with the employer that a provision in the plan's constitution giving the company the right at any time to amend the plan satisfied the requirement in 29 U.S.C. 1102(b)(3) that every plan specify a procedure for amending the plan. 514 U.S. at 78-81. The Court remanded for the lower courts to decide whether the appropriate company officials had approved the new provision in the SPD. *Id.* at 85.

The Court in *Curtiss-Wright* did not address whether the new provision was a valid amendment, much less hold, as petitioners suggest, that it would violate plan amendment requirements to determine benefits based on the terms of an SPD rather than less favorable terms in other documents. At least ten courts of appeals have held that the SPD can trump the formal plan instrument in appropriate circumstances, see *Burstein*, 334 F.3d at 378 & n.18, and none has viewed *Curtiss-Wright* as an impediment to that holding. The conclusion that the SPD may supersede inconsistent terms in other documents presents no conflict with *Curtiss-Wright* because that conclusion does not rest on the theory that the SPD has amended the plan. Instead, it rests on the statutory specification that the SPD is itself a central plan document that must accurately inform participants of their benefits. Accordingly, the administrator cannot give effect to less favorable terms that conflict with the SPD without violating ERISA's command that fiduciaries act in accordance with governing plan documents and ERISA's requirements.

2. A reliance requirement would also be contrary to the contract and trust law underpinnings of ERISA.

Reliance is not required to enforce rights under a contract, including a contract governing compensation for employment, and giving controlling effect to the SPD when it augments rights described in less accessible documents is consistent with the prevailing rule applicable to group insurance policies. See pp. 16-17, *supra*. Nor is there any general requirement that a beneficiary prove reliance to recover for breach of trust. See Restatement § 205, at 458.[6] Although a beneficiary ordinarily may recover damages for breach of trust only if he suffered a loss, the burden generally shifts to the trustee to disprove the loss once the beneficiary has established a prima facie case. *Bogert* § 871, at 156-157. That rule supports the "likely harm" approach rather than a reliance requirement.[7]

3. A reliance requirement would also undermine ERISA's purposes, particularly its goal of ensuring that

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[6] As petitioners note (Br. 23), reliance may be required for certain breach-of-trust claims that are tantamount to fraud claims. But there is also support for presuming reliance in fraud claims against a fiduciary. See, *e.g.*, *Edmunds* v. *Valley Circle Estates*, 20 Cal. Rptr. 2d 701, 708 (Ct. App. 1993); *Watts* v. *Cumberland County Hosp. Sys., Inc.*, 343 S.E.2d 879, 884 (N.C. 1986); *Basile* v. *H&R Block, Inc.*, 777 A.2d 95, 107-108 (Pa. Super. Ct. 2001).

[7] Because ERISA is based on contract and trust law, not tort law, petitioners' invocation (Br. 28-31) of the torts of negligent and fraudulent misrepresentation is mistaken. Moreover, those torts are not analogous to a benefits claim based on an SPD that conflicts with other plan documents. A conflicting SPD is not an extra-contractual misrepresentation of plan terms; it is itself a statement of those terms. In any event, in statutory actions based on misrepresentation, this Court has rejected an affirmative reliance requirement when it would be inconsistent with the statutory scheme. See *Basic Inc.* v. *Levinson*, 485 U.S. 224, 245-246 (1988); *Affiliated Ute Citizens* v. *United States*, 406 U.S. 128, 153 (1972); see also *Bridge* v. *Phoenix Bond & Indem. Co.*, 553 U.S. 639, 641-642 (2010). That is the case here.

participants and their beneficiaries receive the benefits promised to them. Beneficiaries would frequently be unable to prove reliance—especially beneficiaries of deceased participants who are unlikely to have evidence that the participants actually read the SPD and acted differently in response. *E.g.*, *Branch* v. *G. Bernd Co.*, 955 F.2d 1574, 1579-1580 & n.2 (11th Cir. 1992). At the same time, employers and administrators would have little incentive to ensure the accuracy of SPDs, which would frustrate ERISA's goal that participants understand their benefits.

Requiring individualized proof of reliance would also undermine ERISA's goals of promoting efficiency, predictability, and uniformity in plan administration. A reliance requirement may preclude class treatment of SPD benefit claims, see *Heffner* v. *Blue Cross & Blue Shield of Ala., Inc.*, 443 F.3d 1330, 1340 (11th Cir. 2006), and cause benefits under a single plan to vary based on the memories of individual participants and their ability to document their actions in response to statements in the SPD.

4. Finally, a reliance requirement would produce the anomalous result that ERISA "would afford less protection to employees and their beneficiaries than they enjoyed before ERISA was enacted." *Firestone*, 489 U.S. at 114. Before ERISA, participants could recover benefits based on summaries of plan provisions under a contract law theory. *E.g.*, *Miller* v. *Dictaphone Corp.*, 334 F. Supp. 840, 842 (D. Or. 1971); *Gould* v. *Continental Coffee Co.*, 304 F. Supp. 1, 3 (S.D.N.Y. 1969).[8] Partici-

[8] In those pre-ERISA actions, courts generally allowed underlying documents to prevail over a summary if the summary stated that they would control. *E.g.*, *Voigt* v. *South Side Laundry & Dry Cleaners, Inc.*, 128 N.W.2d 411, 412-413 (Wis. 1964). Most courts, however, do not per-

pants could also recover benefits based on an administrator's failure to disclose necessary information without showing detrimental reliance. *E.g.*, *Kosty* v. *Lewis*, 319 F.2d 744, 749 (D.C. Cir. 1963), cert. denied, 375 U.S. 964 (1964). Congress enacted ERISA's SPD requirements to give employees additional protection against "misleading or incomprehensible" descriptions of benefits and eligibility requirements in plan summaries. *Senate Report* 11; H.R. Rep. No. 533, 93d Cong., 1st Sess. 8 (1973). It would therefore make scant sense to interpret ERISA as increasing the burdens on participants seeking to recover benefits based on an SPD.

C. Participants May Sue Under ERISA Section 502(a)(1)(B) To Recover Benefits Based On An SPD

Petitioners also contend (Br. 13-24) that this Court should reverse the judgment below because participants may recover benefits based on an SPD only under ERISA Section 502(a)(3), 29 U.S.C. 1132(a)(3), and the courts below awarded benefits under Section 502(a)(1)(B), 29 U.S.C. 1132(a)(1)(B). That issue is not properly before this Court. Petitioners did not raise it in either the court of appeals or their certiorari petition, which sought review only of the question "[w]hether a showing of 'likely harm' is sufficient to entitle partici-

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mit a group insurance contract to trump a certificate of insurance even if the certificate states that it is subject to the group policy, because the insured is likely to see only the certificate. See 16 *Williston* § 49:26, at 140. Most courts of appeals have likewise concluded that, because the SPD is the only document a participant is likely to see, and ERISA requires it to be accurate, the SPD controls over conflicting terms in underlying documents even if the SPD states, as here, J.A. 922a, 938a, that the underlying documents control. See, *e.g.*, *Burstein*, 334 F.3d at 379; *Heidgerd*, 906 F.2d at 908; but see *Pisciotta* v. *Teledyne Indus., Inc.*, 91 F.3d 1326, 1331 (9th Cir. 1996) (per curiam).

pants * * * to recover benefits" based on an SPD. Pet. i. Whether participants may sue under Section 502(a)(1)(B) is a conceptually different issue, not fairly included in that question. Accordingly, the Court should not address the Section 502(a)(1)(B) issue. See *Izumi Seimitsu Kogyo Kabushiki Kaisha* v. *United States Philips Corp.*, 510 U.S. 27, 30-32 (1993) (per curiam); *Sullivan* v. *Louisiana*, 508 U.S. 275, 278 n.* (1993).

If the Court does reach the issue, it should hold, as indicated in *Kennedy*, 129 S. Ct. at 875, that participants may sue under Section 502(a)(1)(B) to recover benefits based on plan terms described in an SPD. That section authorizes a participant to sue "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. 1132(a)(1)(B). In light of the directive in 29 U.S.C. 1104(a)(1)(D) that administrators must follow the "documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [ERISA]," the phrase "the terms of the plan" in Section 502(a)(1)(B) encompasses terms contained in the governing documents (including the SPD) and consistent with ERISA's provisions.

This Court's decisions reflect that understanding. The Court has stated that Section 502(a)(1)(B) "specifically provides a remedy for breaches of fiduciary duty with respect to the interpretation of plan documents and the payment of claims." *Varity*, 516 U.S. at 512. And, in *Unum Life Ins. Co. of Am.* v. *Ward*, 526 U.S. 358 (1999), the Court held that a state insurance law provision, saved from preemption under ERISA, "effectively create[d] a mandatory contract term" that overrode any contrary plan terms. *Id.* at 374, 376-377 (citation omit-

ted). The Court concluded that the participant's claim was one "to recover benefits due * * * under the terms of his plan," even though the state insurance law provision "supplied the relevant rule of decision." *Id.* at 377. That conclusion applies with even greater force to a claim for benefits based on terms in an SPD that take precedence over contrary terms in other plan documents, because an SPD, unlike a state insurance law, is itself a plan document. Accordingly, its terms, when they control over contrary terms in other documents, are "the terms of the plan," 29 U.S.C. 1132(a)(1)(B), and a suit seeking benefits based on those terms is properly brought under Section 502(a)(1)(B).

Indeed, even if the "terms of the plan" did not include the terms of the SPD, a suit alleging that an SPD controls over inconsistent plan terms in other documents would fall within Section 502(a)(1)(B) because it seeks "to enforce [a participant's] rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. 1132(a)(1)(B). That is because a court, in deciding the effect of the SPD on other expressions of the plan's terms, will necessarily decide the rights the participant has under the terms of the plan and clarify his rights under those terms to future benefits.

Channeling suits seeking benefits based on an SPD through Section 502(a)(1)(B) also best effectuates ERISA's purposes. Participants generally must exhaust administrative remedies before suing under Section 502(a)(1)(B), see *Communications Workers* v. *AT&T Co.*, 40 F.3d 426, 431-432 (D.C. Cir. 1994), but they generally may sue under Section 502(a)(3) without exhausting those remedies, see *Smith* v. *Sydnor*, 184 F.3d 356, 364 (4th Cir. 1999), cert. denied, 528 U.S. 1116 (2000).

Requiring exhaustion promotes efficiency in plan administration by giving administrators an opportunity to address claims in the first instance, possibly eliminating the need for judicial involvement. At the same time, participants who pursue their claims administratively are protected by DOL's claims regulation, 29 C.F.R. 2560.503-1, which ensures them a full and fair review.

In addition, Section 502(a)(1)(B) provides the most appropriate remedies for such suits. It allows participants "to recover benefits due" and to "clarify * * * rights to future benefits" under the plan. 29 U.S.C. 1132(a)(1)(B). Those remedies are exactly what plaintiffs seek when they sue for benefits based on an SPD. Section 502(a)(3), in contrast, is a "safety net" offering "appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy." *Varity*, 516 U.S. at 512. Its equitable remedies may or may not be adequate for claims seeking to enforce the terms in the SPD.[9] Such claims are largely contract-based, demanding benefits promised in one of the central "documents and instruments governing the plan," 29 U.S.C. 1104(a)(1)(D), and they should be enforceable under Section 502(a)(1)(B).

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[9] Some courts have narrowly construed the equitable relief available under Section 502(a)(3). *E.g.*, *Callery* v. *United States Life Ins. Co.*, 392 F.3d 401, 404-408 (10th Cir. 2004) (injunction requiring payment of benefits to remedy failure to provide SPD not available), cert. denied, 546 U.S. 812 (2005). Properly construed, however, that relief may include plan reformation or injunctions requiring payment of benefits. *E.g.*, *Varity*, 516 U.S. at 495, 515; *Nechis* v. *Oxford Health Plans, Inc.*, 421 F.3d 96, 103 (2d Cir. 2005); *Mathews* v. *Chevron Corp.*, 362 F.3d 1172, 1185-1186 (9th Cir. 2004).

D. The Lower Courts Correctly Applied The "Likely Harm" Standard

Although the formal instruments establishing petitioners' cash balance plan provided for lengthy "wear away" periods during which some employees would work without accruing additional benefits, the SPDs and SMM indicated that all participants would accrue additional benefits continuously under the new plan, without "wear away." Applying the "likely harm" standard, the district court appropriately treated the SPDs and SMM as authoritative expressions of the plan's terms, and the court of appeals correctly affirmed that decision.

The district court correctly determined that respondents established likely harm from petitioners' failure to adhere to the SPDs and SMM. As the court explained, those documents "'likely, and quite reasonably, led plan participants to believe' that wear away was not a likely result of the transition" to the new plan. Pet. App. 136a (citation omitted). The SPDs and SMM thus likely led reasonable participants to expect materially more favorable benefits than those provided by the formal plan instruments, under which "some CIGNA employees' pension benefits did not grow for several years as a result" of "wear away." *Id.* at 123a. Pension benefits are an important part of an employee's compensation package, and a reasonable employee would view the fact that he would be working for extended periods without accruing additional benefits as an important feature of a pension plan.

Although respondents were not required to establish that they read and relied on the SPDs and SMM, CIGNA's own survey showed that 92% of responding participants thoroughly read the SMM. J.A. 895a. And the district court found that the statements in the SPDs

and SMM deprived participants of the opportunity to take timely action in response to the conversion, including looking for other work or protesting when the new plan was implemented, Pet. App. 137a, which had led other companies to revise or revoke similar conversions, *id.* at 112a-114a.

The district court also correctly concluded that petitioners failed to show that participants were not actually harmed by the failure to adhere to the promises in the SPDs and the SMM. Petitioners introduced no evidence that any participant had read the conflicting formal plan instruments, which were not circulated to employees. And petitioners failed to show that they distributed any other materials to employees making clear that, contrary to the SPDs and SMM, the new plan would include "wear away." Pet. App. 133a; cf. *Pierce* v. *Security Trust Life Ins. Co.*, 979 F.2d 23, 30 (4th Cir. 1992) (per curiam) (participants suffered no "prejudice" when corrected SPDs were issued before the discrepancy between prior SPDs and the underlying documents had any adverse effect). Petitioners did not call any witnesses to show that, despite the SPDs, some employees understood that they would be working without accruing additional benefits, and petitioners declined to engage in discovery on the issue. See Pet. App. 166a; cf. *Govoni* v. *Bricklayers, Masons & Plasterers Int'l Union, Local No. 5 Pension Fund*, 732 F.2d 250, 252-253 (1st Cir. 1984) (Breyer, J.) (employee suffered no "possible prejudice" from SPD's failure to disclose limit on eligibility when he was actually aware of that limit before he retired). The district court therefore reasonably decided that petitioners should not get an additional opportunity to show the possible existence of employees who expected the plan to provide materially less favor-

able benefits than those promised by the SPDs and SMM. Pet. App. 166a. Accordingly, the court appropriately ordered petitioners to give respondents what those documents promised—and what ERISA now requires all participants in cash balance conversions to receive, see 29 U.S.C. 1054(b)(5)(B)(iii)—the provision of benefits without "wear away."

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. Section 1002 of Title 29 of the United States Code provides in pertinent part:

Definitions

For purposes of this subchapter:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

(2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(i) provides retirement income to employees, or

(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan. A distribution from a plan, fund, or program shall not be treated as made in a form other than retirement income or as a distribution prior to termination of covered employment solely because such distribution is made to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

(B) The Secretary may by regulation prescribe rules consistent with the standards and purposes of this chapter providing one or more exempt categories under which—

(i) severance pay arrangements, and

(ii) supplemental retirement income payments, under which the pension benefits of retirees or their beneficiaries are supplemented to take into account some portion or all of the increases in the cost of living (as determined by the Secretary of Labor) since retirement,

shall, for purposes of this subchapter, be treated as welfare plans rather than pension plans. In the case of any arrangement or payment a principal effect of which is the evasion of the standards or purposes of this chapter applicable to pension plans, such arrangement or payment shall be treated as a pension plan. An applicable voluntary early retirement incentive plan (as defined in section 457(e)(11)(D)(ii) of Title 26) making payments or

supplements described in section 457(e)(11)(D)(i) of Title 26, and an applicable employment retention plan (as defined in section 457(f)(4)(C) of Title 26) making payments of benefits described in section 457(f)(4)(A) of Title 26, shall, for purposes of this subchapter, be treated as a welfare plan (and not a pension plan) with respect to such payments and supplements.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

* * * * *

2. Section 1022 of Title 29 of the United States Code provides:

Summary plan description

(a) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 1024(b) of this title. The summary plan description shall include the information described in subsection (b) of this section, shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section shall be written in a manner calculated to be understood by

the average plan participant and shall be furnished in accordance with section 1024(b)(1) of this title.

(b) The summary plan description shall contain the following information: The name and type of administration of the plan; in the case of a group health plan (as defined in section 1191b(a)(1) of this title), whether a health insurance issuer (as defined in section 1191b(b)(2) of this title) is responsible for the financing or administration (including payment of claims) of the plan and (if so) the name and address of such issuer; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names, titles, and addresses of any trustee or trustees (if they are persons different from the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan including the office at the Department of Labor through which participants and beneficiaries may seek assistance or information regarding their rights under this chapter and the Health Insurance Portability and Accountability Act of 1996 with respect to health benefits that are offered through a group health plan (as defined in section 1191b(a)(1) of this title), the remedies available under

the plan for the redress of claims which are denied in whole or in part (including procedures required under section 1133 of this title).

3. Section 1024 of Title 29 of the United States Code provides in pertinent part:

* * * * *

(b) Publication of summary plan description and annual report to participants and beneficiaries of plan

Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, a copy of the summary plan description, and all modifications and changes referred to in section 1022(a)(1) of this title—

(A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or

(B) if later, within 120 days after the plan becomes subject to this part.

The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, every fifth year after the plan becomes subject to this part an updated summary plan description described in section 1022 of this title which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period this sentence shall not apply. Not-

withstanding the foregoing, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, the summary plan description described in section 1022 of this title every tenth year after the plan becomes subject to this part. If there is a modification or change described in section 1022(a) of this title (other than a material reduction in covered services or benefits provided in the case of a group health plan (as defined in section 1191b(a)(1) of this title)), a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan. If there is a modification or change described in section 1022(a) of this title that is a material reduction in covered services or benefits provided under a group health plan (as defined in section 1191b(a)(1) of this title), a summary description of such modification or change shall be furnished to participants and beneficiaries not later than 60 days after the date of the adoption of the modification or change. In the alternative, the plan sponsors may provide such description at regular intervals of not more than 90 days. The Secretary shall issue regulations within 180 days after August 21, 1996, providing alternative mechanisms to delivery by mail through which group health plans (as so defined) may notify participants and beneficiaries of material reductions in covered services or benefits.

(2) The administrator shall make copies of the latest updated summary plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was

established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Secretary may prescribe by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 1023(b)(3) of this title and such other material (including the percentage determined under section 1023(d)(11) of this title) as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary,[1] plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

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[1] So in original. Comma probably should not appear

4. Section 1104 of Title 29 if the United States Code provides in pertinent part:

Fiduciary duties

(a) **Prudent man standard of care**

(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter and subchapter III of this chapter.

* * * * *

5. Section 1132 of Title 29 of the United States Code provides in pertinent part:

Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

* * * * *

6. Section 2520.102-2 of Title 29 of the Code of Federal Regulations provides in pertinent part:

Style and format of summary plan description.

(a) *Method of presentation.* The summary plan description shall be written in a manner calculated to be understood by the average plan participant and shall be

sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan. In fulfilling these requirements, the plan administrator shall exercise considered judgment and discretion by taking into account such factors as the level of comprehension and education of typical participants in the plan and the complexity of the terms of the plan. Consideration of these factors will usually require the limitation or elimination of technical jargon and of long, complex sentences, the use of clarifying examples and illustrations, the use of clear cross references and a table of contents.

(b) *General format.* The format of the summary plan description must not have the effect to misleading, misinforming or failing to inform participants and beneficiaries. Any description of exception, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure or otherwise made to appear unimportant. Such exceptions, limitations, reductions, or restrictions of plan benefits shall be described or summarized in a manner not less prominent than the style, captions, printing type, and prominence used to describe or summarize plan benefits. The advantages and disadvantages of the plan shall be presented without either exaggerating the benefits or minimizing the limitations. The description or summary of restrictive plan provisions need not be disclosed in the summary plan description in close conjunction with the description or summary of benefits, provided that adjacent to the benefit description the page on which the restrictions are described is noted.

* * * * *

AMICUS CURIAE BRIEF

No. 09-804

IN THE
SUPREME COURT OF THE UNITED STATES

CIGNA CORPORATION and CIGNA PENSION PLAN,
Petitioners,

v.

JANICE C. AMARA, GISELA R. BRODERICK, ANNETTE S. GLANZ, Individually and on Behalf of All Others Similarly Situated,
Respondents.

**On Writ Of Certiorari To
The United States Court Of Appeals
For The Second Circuit**

BRIEF *AMICUS CURIAE* OF AARP IN SUPPORT OF RESPONDENTS

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October 2010

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF ARGUMENT 2

ARGUMENT 4

I. CONGRESS ENACTED ERISA TO PROTECT PROMISES OF PENSION BENEFITS SO EMPLOYEES COULD PLAN FOR THEIR RETIREMENT 4

A. Retirement Benefits Are A Critical Element of An Employee's Compensation Package 4

B. Inaccurate Or Misleading Information Concerning Employee Benefits Skews The Employment Relationship To Favor Employers 6

C. Congress Enacted ERISA To Protect Participants And Used Accurate Disclosure As One Of The Mechanisms To Do So 7

D. Congress Intended That ERISA's Disclosure And Notice Requirements Inform Employees Of The Benefits They Should Expect – Or Not Expect – From A Plan 10

II. IN RESOLVING A CONFLICT BETWEEN THE FORMAL PLAN DOCUMENT AND THE SUMMARY PLAN DESCRIPTION, THE USE OF A DETRIMENTAL RELIANCE STANDARD IS INCONSISTENT WITH ERISA'S PURPOSES AND TERMS 14

CONCLUSION 19

TABLE OF AUTHORITIES

CASES

Cent. Laborers' Pension Fund v. Heinz,
541 U.S. 739 (2004) 4

Hardt v. Reliance Std. Life Ins. Co.,
130 S. Ct. 2149 (2010) 3, 14

Muscemi v. Schwegmann Giant Super Mkts.,
159 F. Supp. 2d 329 (E.D. La. 2001),
aff'd in part & vacated in part,
332 F.3d 339 (5th Cir. 2003) 10

Nachman Corp. v. Pension Ben. Guar. Corp.,
446 U.S. 359 (1980) 2, 8, 14

Varity Corp. v. Howe, 516 U.S. 489 (1996) 4

Young v. Verizon's Bell Atl. Cash Balance Plan,
2010 U.S. App. LEXIS 16483
(7th Cir. 2010) 17, 18

STATUTES, REGULATIONS AND LEGISLATIVE HISTORY

Employee Retirement Income Security Act
(ERISA) of 1974, 29 U.S.C. § 1001 *et seq.*

ERISA § 2, 29 U.S.C. § 1001 ..... 1, 2, 8
ERISA § 2(a), 29 U.S.C. § 1001(a) 9
ERISA § 101, 29 U.S.C. § 1021 ..... 3, 11, 14
ERISA § 102, 29 U.S.C. § 1022 ..... 3, 11, 14
ERISA § 103, 29 U.S.C. § 1023 ..... 3, 11, 14

ERISA § 104, 29 U.S.C. § 1024 ..... 3, 11, 14

29 C.F.R.
§ 2520.102-2 ..... 11, 14
§ 2520.102-3 ..... 11, 14
§ 2520.104b-1 ..... 11, 14
§ 2520.104b-2 ..... 11, 14
§ 2520.104b-3 ..... 11, 14
§ 2520.104b-4 ..... 11, 14

Employee Retirement Income Security Act, Pub. L. No. 93-406, *reprinted in* SUBCOMM. ON LABOR OF THE COMM. ON LABOR AND PUBLIC WELFARE, 94th CONG., Legislative History of the Employee Retirement Income Security Act of 1974 (1976) 4

Legislative History of the Employee Retirement Income Security Act of 1974, Vol. III 8

OTHER AUTHORITIES

A. Baddeley, *Working Memory: Looking Back And Looking Forward*, 4 NEUROSCIENCE 829 (Oct. 2003) 15

Sewin Chan & Ann Huff Stevens, *What You Don't Know Can't Help You: Pension Knowledge and Retirement Decision Making*, 90(2) THE REV. ECON. & STAT. 253 (May 2008). 3, 13

Sewin Chan & Ann Huff Stevens, *What You Don't Know Can't Help You: Pension Knowledge and Retirement Decision Making*, NATIONAL BUREAU OF ECONOMIC RESEARCH, Working Paper No. 10185 (Dec. 2003)..... 15

David Charny, *The Employee Welfare State in Transition*, 74 TEX. L. REV. 1601 (1996)..... 6

Esther Duflo and Emmanual Saez, *The Role of Information and Social Interactions in Retirement Plan Decisions*, 118(3) Q. J. ECON. 816 (Aug. 2003) 13

Financial Industry Regulatory Authority Investor Education Foundation, *Financial Capability in the United States: National Survey* (Dec. 2009), http://www.finrafoundation.org 15

Teresa Ghilarducci, *Pensions & The Uses of Ignorance by Unions and Firms*, 11(2) J. LAB. RES. 203 (Spring 1990)..... 2, 6

Jerry Haar and Sharon Kossack, *Employee Benefit Packages: How Understandable Are They?*, 27:2 J. BUS. COMM. 185 (Mar. 1990) 15

Hartford Financial Services Group, *Study from the Hartford Finds Economy Takes Toll on Pre-Retirees and Their Retirement Dreams*, http://ir.thehartford.com/releasedetail.cfm?releaseid=512699 12

Russell Korobkin & Thomas Ulen, *Law and Behavioral Science: Removing the Rationality Assumption From Law and Economics*, 88 CAL. L. REV. 1051 (July 2000) 6, 7, 10

Anne Marie Lofaso, *Toward A Foundational Theory of Workers' Rights: The Autonomous Dignified Worker*, 76 UMKC L. REV. 1 (Fall 2007)..... 4, 6

Andrew A. Luchak and Morley Gunderson, *What Do Employees Know About Their Pension Plan?*, 39(4) INDUS. REL. 650 (Oct. 2000) 7, 16, 17

A. Lusardi, O. Mitchell & V. Curto, *Financial Literacy and Financial Sophistication in the Older Population: Evidence from the 2008 HRS*, MRRC Working Paper 2009-216 (2009) 16

Colleen Medill, Richard Wiener, Brian Bornstein, E. Kiernan McGorty, *How Readable Are Summary Plan Descriptions for Health Care Plans?*, 27 EBRI NOTES, No. 10 (Oct. 2006) 14

Gordon B. T. Mermin, The Urban Institute, *Typical Wealth Held by Those at the Verge of Retirement* (Mar. 2008), http://www.urban.org/UploadedPDF/411618_ typical_wealth.pdf 9

MetLife, *Eighth Annual Study of Employee Benefits Trends: Findings from the National Survey of Employers and Employees* (2010) 2, 5

Olivia S. Mitchell, *Worker Knowledge of Pension Provisions*, 6(1) J. LAB. ECON. 22 (Jan. 1988)..... 10, 16, 17

A.H. Munnell, A. Webb & F. Golub-Sass, *The National Retirement Risk Index: After The Crash* (IB # 9-22 Oct. 2009), http://crr.bc.edu/briefs/the_national_retirement_risk_index_after_the_crash.html..... 9

National Center for Education Statistics, *Digest of Education Statistics, 2009* (Apr. 2010), http://nces.gov/progrmas/digest/d09/tables/dt09_008.asp?referrer+report 17

Marlene O'Connor, *Restructuring the Corporation's Nexus of Contracts: Recognizing a Fiduciary Duty to Protect Displaced Workers*, 69 N.C.L. REV. 1189 (June 1991) 6

Richard A. Oppel, Jr., *Companies Cash In on New Pension Plan: But Older Workers Can Face Penalties*, NEW YORK TIMES, Aug. 20, 1999, http://www.nytimes.com/1999/08/20/business/companies-cash-in-on-new-pension-plan-but-older-workers-can-face-penalties.html?scp=2&sq=%22IBM%22+and+%22protest%22&st=nyt 3, 11

David A. Pratt & Martin M. Heming, *Focus On...Scrivener's Errors*, 15 J. PENSION BENEFITS 19 (Summer 2008).. 18

Ellen E. Schultz & William M. Bulkeley, *IBM Pension-Plan Changes Are Ruled Discriminatory*, THE WALL STREET JOURNAL ONLINE, Aug. 1, 2003, http://online.wsj.com/article/0,,SB1059684069379567 00,00.html 11

Society for Human Resource Management, *2009 Employee Benefits: Examining Employee Benefits in a Fiscally Challenging Economy* (June 2009), http://www.shrm.org/Research/SurveyFindings/Articles/Pages/2009 5

Darryl K. Taft & Edward F. Moltzen, *IBM Employees March Against Pension Change*, CRN TECHNOLOGY NEWS, July 3, 1999, http://www.crn.com/news/channel-programs/18803847/ibm-employees-march-against-pension-change.htm;jsessionid=lPvgJ47qMLCzvP3OgG+UxQ**.ecappj01 11

Richard Thaler & Cass Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (Yale 2008) 12

Treasury Inspector General for Tax Administration, *Statistical Trends in Retirement Plans* (Ref. No. 2010-10-097 Aug. 9, 2010), http://www.treas.gov/tigta/auditreports/2010reports/201010097fr.pdf 9

U.S. Dep't of Education, National Center for Education Statistics, Institute of Education Sciences, *Literacy in Everyday Life: Results From the 2003 National Assessment of Adult Literacy* (Apr. 2007), http://nces.ed.gov/naal 17

U.S. Dep't of Labor, Employee Benefits Security Administration, ERISA Advisory Council, *Report of the Working Group on Communications to Retirement Plan Participants* (Nov. 2005), http://www.dol.gov/ebsa/publications/AC_1105b_report.html 3, 13, 14, 17

U.S. Gov't Accountability Office, GAO-06-42, *Private Pensions: Implications of Conversions to Cash Balance Plans* (2005). 12

INTEREST OF *AMICUS CURIAE*

AARP is a non-partisan, non-profit organization dedicated to representing the needs and interests of people age fifty and older. Nearly half of AARP's members are employed full or part-time, with many working for employers which provide health, pension and disability benefit plans covered by the Employee Retirement Income Security Act (ERISA) of 1974, 29 U.S.C. § 1001 *et seq.*

Participants and beneficiaries[2] in private, employer-sponsored employee benefit plans rely on ERISA to protect their rights under those plans. 29 U.S.C. § 1001 *et seq.* In particular, ERISA's protections, and the ability to enforce these protections, are of vital concern to older workers and retirees, since the quality of their lives in retirement depends heavily on their eligibility for and the amount of their pension and welfare benefits.

Thus, resolution of the issues in this case will have a significant impact on the integrity of the

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[1] In compliance with Rule 37 of this Court, counsel for AARP states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the *amicus curiae's* intention to file this brief. The parties have consented to the filing of this brief.

[2] AARP's use of the term "participants" throughout this brief also includes the term "beneficiaries."

administration of employee benefit plans, individual participants' abilities to obtain accurate information to make informed decisions concerning their employment and benefits, and their ability to obtain their retirement benefits which will foster their economic security. In light of the significance of the issues presented by this case, AARP respectfully submits this brief *amicus curiae* to facilitate a full consideration by the Court of these issues.

SUMMARY OF ARGUMENT

Because company benefit packages including pensions are a critical component of the employment relationship, *see* MetLife, *Eighth Annual Study of Employee Benefits Trends: Findings from the National Survey of Employers and Employees* at 8, 18 (2010) (hereinafter *Eighth Annual Study*), affirmative misrepresentations or knowing omissions about those benefits puts employees in a disadvantageous position because they may overvalue their benefits, accept lower compensation, or stay with that employer longer. Teresa Ghilarducci, *Pensions & The Uses of Ignorance by Unions and Firms,* 11(2) J. LAB. RES. 203, 204, 206 (Spring 1990). In enacting ERISA, Congress sought to hold employers accountable for the benefit they promised employees by requiring accurate, understandable, and timely disclosures. *See Nachman Corp. v. Pension Ben. Guar. Corp.,* 446 U.S. 359, 374-75 (1980); ERISA § 2, 29 U.S.C. § 1001. If pension disclosures are accurate and understandable, whether participants specifically read them or learned about them by another

method,[3] participants can make informed decisions concerning their benefits and employment, ranging from protesting, looking for new employment, or saving more. *E.g.*, Richard A. Oppel, Jr., *Companies Cash In on New Pension Plan; But Older Workers Can Face Penalties*, N.Y. TIMES, Aug. 20, 1999.

ERISA's statutory language neither creates nor compels a subjective reliance or prejudice standard in its disclosure requirements, *see* ERISA §§ 101-104, 29 U.S.C. §§ 1021-1024, and one should not be inferred from the statute's clear language. *See Hardt v. Reliance Std. Life Ins. Co.*, 130 S. Ct. 2149, 2156 (2010). If plans have no incentive to provide accurate and understandable summary plan descriptions, many participants will have trouble understanding them and remembering their provisions. *See* U.S. Dep't of Labor, Employee Benefits Security Administration, ERISA Advisory Council, *Report of the Working Group on Communications to Retirement Plan Participants* (Nov. 2005) (hereinafter *Report of the Working Group*). A detrimental reliance or prejudice standard which requires reading, understanding, and recollection will be impossible for most participants to prove and is inconsistent with Congress' carefully crafted disclosure scheme.

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[3] *See* Sewin Chan & Ann Huff Stevens, *What You Don't Know Can't Help You: Pension Knowledge and Retirement Decision Making*, 90(2) THE REV. ECON. & STAT. 253, 260-61 (May 2008).

ARGUMENT

I. CONGRESS ENACTED ERISA TO PROTECT PROMISES OF PENSION BENEFITS SO EMPLOYEES COULD PLAN FOR THEIR RETIREMENT.

More than a decade after this Court decided that improper disclosures in an employee benefit plan could give rise to a breach of fiduciary duty claim, *Varity Corp. v. Howe*, 516 U.S. 489 (1996), and more than five years after this Court recognized a change in plan provisions could not affect pension benefits that were already earned, *Cent. Laborers' Pension Fund v. Heinz*, 541 U.S. 739 (2004), the Court is called upon to determine, yet again, the relationship between changes in plan provisions, improper disclosures about those changes, and the impact on employees' benefits.

A. Retirement Benefits Are A Critical Element of An Employee's Compensation Package.

A simple equation exists in the workplace: an employer is able to operate its business with the benefit of an employee's labor in exchange for paying that employee a salary and other benefits. *See generally* Anne Marie Lofaso, *Toward A Foundational Theory of Workers' Rights: The Autonomous Dignified Worker*, 76 UMKC L. REV. 1 (Fall 2007). The benefits exchanged for the employee's labor often may include pension and other employee benefits. *See* Employee Retirement

Income Security Act, Pub. L. No. 93-406, *reprinted in* SUBCOMM. ON LABOR OF THE COMM. ON LABOR AND PUBLIC WELFARE, 94th CONG., Legislative History of the Employee Retirement Income Security Act of 1974, at 4751 (1976).

Company benefit packages are important to employees and employers. Pension benefits play an important role in an employer's ability to recruit, retain, and maintain productivity in a high quality workforce. *See* MetLife, *Eighth Annual Study* at 8, 18; Society for Human Resource Management, *2009 Employee Benefits: Examining Employee Benefits in a Fiscally Challenging Economy* at 8, 19-20, 23-242 (June 2009), http://www.shrm.org/Research/SurveyFindings/Articles/Pages/2009EmployeeBenefitsSurveyReport.aspx (concluding that "[e]mployees consistently rate benefits as one of the key factors in employee job satisfaction. It is important for an employee benefits package to be attractive to both current and prospective employees . . . ."). Moreover, more than three-quarters of employees surveyed believed that retirement benefits were important factors to generate employee loyalty. MetLife, *Eighth Annual Study* at 19. As the demographics of this country change, employees are focusing more on retirement issues. Consequently, in return for offering pension benefits, the employer obtains lower employee turnover, which reduces costs and improves productivity. *Id.* at 8.

B. Inaccurate Or Misleading Information Concerning Employee Benefits Skews The Employment Relationship To Favor Employers.

Inequalities in information between an employer and its employees, such as the imbalance that CIGNA created by affirmatively misrepresenting the losses from wear-away to its employees, are valuable to the employer because employees will only later learn they will not receive the benefits they expected. Meanwhile, employees will remain with their employer, thereby minimizing the employer's recruiting and training costs, and the employer's reputation will not be harmed. *See* David Charny, *The Employee Welfare State in Transition*, 74 TEX. L. REV. 1601, 1618 (1996); Marlene O'Connor, *Restructuring the Corporation's Nexus of Contracts: Recognizing a Fiduciary Duty to Protect Displaced Workers*, 69 N.C.L. REV. 1189, 1208 (June 1991); *see generally* Lofaso, at 9 (firms attempt to maximize profits); Russell Korobkin & Thomas Ulen, *Law and Behavioral Science: Removing the Rationality Assumption From Law and Economics*, 88 CAL. L. REV. 1051, 1064 (July 2000) (individuals must have complete and accurate information in order to make true comparisons and maximize their wealth).

When employees are told they have a "good" pension plan and losses or other restrictions are undisclosed, employees overvalue their benefits, accept lower compensation packages, or stay longer with that employer. Ghilarducci, at 203-04, 206; *see*

also Korobkin & Ulen, at 1054 ("people respond to incentives"). Ignorance of the plan's rules among less influential or knowledgeable employees can also permit employers to redistribute benefits to more valued or influential employees without significant resistance, such as occurred here with CIGNA's grandfathering of certain employees including the CEO and other executives under the prior plan. *See* Andrew A. Luchak and Morley Gunderson, *What Do Employees Know About Their Pension Plan?*, 39(4) INDUS. REL. 650, 651, 664-65 (Oct. 2000). By failing to accurately disclose the cash balance plan changes in its summary plan descriptions and summary of material modifications, CIGNA employees were left with the perception that the amount of their retirement benefits would be higher than they actually were. As a corollary, CIGNA was able to gain something valuable without assuming additional costs that would hurt its bottom line.

C. Congress Enacted ERISA To Protect Participants And Used Accurate Disclosure As One Of The Mechanisms To Do So.

After assembling a record that showed a history and pattern of employees failing to receive their promised employee benefits, a lack of disclosure and transparency, and varied and numerous financial abuses, Congress enacted ERISA, declaring that in its judgment "the interests of participants in employee benefit plans and their beneficiaries" should be protected. Congress concluded that among the safeguards which would

lead to the protection of employee benefits was "the disclosure and reporting to participants and beneficiaries of financial and other information . . . .," by requiring "disclosures be made and safeguards be provided with respect to the establishment, operation, and administration of such plans," and "by establishing standards of conduct, responsibility, and obligation of fiduciaries of employee benefit plans." ERISA § 2, 29 U.S.C. § 1001; *see also* Legislative History of the Employee Retirement Income Security Act of 1974, Vol. III, at 4668 (stating that the "availability of this information will enable both participants and the Federal Government to monitor the plans' operations").[4] This language in ERISA's legislative declaration demonstrates Congress' obvious and unremarkable intent that ERISA would make it easier, not more difficult, for participants to obtain their benefits.

One of Congress' primary focuses in enacting ERISA was to hold employers accountable for the benefits they promise to their employees to ensure that employees can safely rely on such promises in their retirement planning. This type of accountability is central to ERISA's primary goal of protecting employees' benefits. *See Nachman Corp.*,

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[4] ERISA's legislative findings do not mention "cost-effective plan administration," "minimizing administrative and financial burdens," or "promotion of plan formation." Accordingly, these goals are secondary to the Act's stated policies – the principal of which is the "protection of employee benefit rights." *Cf.* ERISA § 2, 29 U.S.C. § 1001 (reviewing the necessity for enactment to protect participants and beneficiaries).

446 U.S. at 374-75 (purpose of ERISA was to prevent the "great personal tragedy" suffered by employees whose retirement benefits were not paid); *see generally* ERISA § 2(a), 29 U.S.C. § 1001(a).

For many people, outside of Social Security, employee benefit plans are the main source of retirement assets.[5] As longevity, and thus the amount of assets needed to live comfortably in retirement increases,[6] these retirement plans become even more important.

When an employer fails to pay the pension benefits expected at retirement, it wreaks financial havoc upon employees and their families by destroying a lifetime of planning for their retirement years. Retirement typically occurs at an age where employees no longer have the option or the time to start all over again in hopes of obtaining a new pension. *See* Treasury Inspector General for Tax Administration, *Statistical Trends in Retirement*

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[5] While defined contribution plans have largely replaced traditional pensions for many younger workers in the private sector, traditional pensions are still the more important source of wealth for middle-quintile households near retirement today. Gordon B. T. Mermin, The Urban Institute, *Typical Wealth Held by Those at the Verge of Retirement* (Mar. 2008), http://www.urban.org/UploadedPDF/411618_typical_wealth.pdf.

[6] A.H. Munnell, A. Webb & F. Golub-Sass, *The National Retirement Risk Index: After The Crash* 1, 2, 6 (IB # 9-22 Oct. 2009), http://crr.bc.edu/briefs/the_national_retirement_risk_index_after_the_crash.html (from 2004 to 2009, the percent of households who are at risk of being unable to maintain their standard of living in retirement increased from 43% to 51%).

Plans at 14 (Ref. No. 2010-10-097 Aug. 9, 2010), http://www.treas.gov/tigta/auditreports/2010reports/201010097fr.pdf. The long-term effect of an employer reneging on its benefit promise is devastating and emotionally shattering for employees and their families. *See generally Muscemi v. Schwegmann Giant Super Mkts.* 159 F. Supp. 2d 329 (E.D. La. 2001), *aff'd in part & vacated in part*, 332 F.3d 339 (5th Cir. 2003).

D. Congress Intended That ERISA's Disclosure And Notice Requirements Inform Employees Of The Benefits They Should Expect – Or Not Expect – From A Plan.

If employees do not receive accurate information which permits them to determine their rights and obligations under an employee benefit plan, it is impossible for them to determine what, if any, actions they must take to protect their rights, or to make informed decisions concerning their benefits and employment. *See* Korobkin & Ulen, at 1064 ("actors should be able to compare the utility consequences of all alternatives to each other"). If workers have undue difficulty obtaining accurate pension information, they make myopic and suboptimal decisions regarding when to retire or how much to save for retirement. *See* Olivia S. Mitchell, *Worker Knowledge of Pension Provisions*, 6(1) J. LAB. ECON. 22, 36 (Jan. 1988) (*id.*). This is particularly true in cash balance conversions, like the retirement plan at issue, because the transition formulas are complicated.

In contrast, disclosures that are accurate and understandable in accord with ERISA's statutory and regulatory requirements, ERISA §§ 101-104, 29 U.S.C. §§ 1021-1024, *see also* 29 C.F.R. §§ 2520.102-2 & 102-3; 29 C.F.R. §§ 2520.104b-1 – 104b-4, can equip participants with the information they need to make informed decisions concerning their benefits and employment, ranging from protesting for changes in benefit plans and improved compensation,[7] looking for new employment, saving

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[7] The backlash from some of IBM's employees to IBM's cash balance conversion was legendary among employers, and had to be known to CIGNA's executives. It illustrates that employee protests about benefit losses or requests for additional compensation to make up for them can be effective with far less than 100% participation. *E.g.*, Richard A. Oppel, Jr., *Companies Cash In on New Pension Plan; But Older Workers Can Face Penalties*, N.Y. TIMES, Aug. 20, 1999, http://www.nytimes.com/1999/08/20/business/companies-cash-in-on-new-pension-plan-but-older-workers-can-face-penalties.html?scp=2&sq=%22IBM%22+and+%22protest%22&st=nyt ("But it is I.B.M.'s conversion that has set off the harshest and most publicized reaction from its employees. Since the company, based in Armonk, N.Y., disclosed the change this spring, the backlash has turned into a social movement of sorts, with fuming employees conspiring via E-mail to protest and pressure their company to rescind the conversion."); Darryl K. Taft & Edward F. Moltzen, *IBM Employees March Against Pension Change*, CRN TECHNOLOGY NEWS, July 3, 1999, http://www.crn.com/news/channel-programs/18803847/ibm-employees-march-against-pension-change.htm;jsessionid=lPvgJ47qMLCzvP3OgG+UxQ**.ecappj01; Ellen E. Schultz & William M. Bulkeley, *IBM Pension-Plan Changes Are Ruled Discriminatory*, THE WALL STREET JOURNAL ONLINE, Aug. 1, 2003, http://online.wsj.com/article/0,,SB105968406937956700,00.html ("IBM's conversion to a cash-balance plan in 1999 led to a fire storm of protest from longtime employees, who estimated their pensions would fall by 20% to 40% or more. In

more, or working longer.[8] A strong reaction by CIGNA's employees to cuts in benefits, such as the significant benefit reduction caused by the wear-aways at issue in its pension plan,[9] would not have been surprising because people react very strongly to losses, a phenomenon known as "loss aversion." Richard Thaler & Cass Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (Yale 2008), at 112, 120 ("people hate to see their paychecks go down"; "[r]oughly speaking, they hate losses about twice as much as they like gains").

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response, the company relented and allowed people older than 40 with 10 years of service to remain in the prior plan if they wished.").

[8] As shown by surveys like one conducted by The Hartford Financial Services Group, people need to know about reductions in their retirement benefits not only to ask for unfavorable changes to be reconsidered, but also in order to make timely decisions to save more, to work longer or to work part-time during retirement. *See Study from the Hartford Finds Economy Takes Toll on Pre-Retirees and Their Retirement Dreams*, http://ir.thehartford.com/releasedetail.cfm?releaseid=512699.

[9] Although most workers experienced some benefit reductions, older workers experienced greater losses of expected benefits than younger workers: the median benefit reduction for workers at age 30 at the conversion was $59 per month versus $238 per month for workers at age 50. U.S. Gov't Accountability Office, GAO-06-42, *Private Pensions: Implications of Conversions to Cash Balance Plans* 36-38 (2005).

Regardless of whether participants thoroughly read the disclosures at the outset,[10] refer to them when benefits are due,[11] or learn of changes from the approximately twenty percent of employees who are the experts in the workplace,[12] accurate, timely and meaningful disclosures work. When employees fail to receive accurate required information, whether through omission or affirmative misrepresentation, Congress' carefully crafted reporting and disclosure scheme and the protections which flow from that scheme are effectively destroyed.

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[10] CIGNA's own survey demonstrated that 92% of employees said they thoroughly read the summaries that CIGNA provided them. *See* J.A. 895a. Numerous employees including the class representatives testified that they had read the summaries. *See* J.A. 149a-150a, 168a, 182a-183a, 203a-204a, 213a, 222a, 229a-230a.

[11] *See* ERISA Advisory Council, *Report of the Working Group*, http://www.dol.gov/ebsa/publications/AC_1105b_report.html (many participants use their summaries as a reference manual similar to a car manual).

[12] *See* Chan & Stevens, at 260-61 (the approximately twenty percent of employees who understand their retirement plans and how they work drive the provisions in the plans); *see also* Esther Duflo and Emmanual Saez, *The Role of Information and Social Interactions in Retirement Plan Decisions*, 118(3) Q. J. ECON. 816-820 (Aug. 2003) (persons who may not be literate enough to understand an SPD and those who rely on SPDs as reference guides "may obtain information about the employer retirement plan from discussions with their colleagues, or make inferences based on observing their decisions").

II. IN RESOLVING A CONFLICT BETWEEN THE FORMAL PLAN DOCUMENT AND THE SUMMARY PLAN DESCRIPTION, THE USE OF A DETRIMENTAL RELIANCE STANDARD IS INCONSISTENT WITH ERISA'S PURPOSES AND TERMS.

ERISA's statutory language neither creates nor compels a subjective reliance or prejudice standard in its disclosure requirements, *see* ERISA §§ 101-104, 29 U.S.C. §§ 1021-1024, and one should not be inferred from the statute's clear language. *See Hardt*, 130 S. Ct. at 2156; *see also* 29 C.F.R. §§ 2520.102-2 & 102-3; 29 C.F.R. §§ 2520.104b-1 – 104b-4.

Under CIGNA's approach, only an individual employee who reads, understands, and remembers specific provisions of the summaries, and then takes individual action can possibly recover when there is a conflict between the formal plan document and the summary plan description.

Although summary plan descriptions are the primary source of benefits information, they are frequently written at a literacy level higher than the average plan participant can understand.[13] Given

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[13] *See* ERISA Advisory Council, *Report of the Working Group*, http://www.dol.gov/ebsa/publications/AC_1105b_report.html; *see generally* Colleen Medill, Richard Wiener, Brian Bornstein, E. Kiernan McGorty, *How Readable Are Summary Plan Descriptions for Health Care Plans?*, 27 EBRI NOTES, No. 10 at 1-2 (Oct. 2006) (assessment of samples of forty health plan summary plan descriptions health plans for readability and understandability found they were written at a first year

the documented high levels of financial illiteracy among Americans, it is not surprising that summary plan descriptions would be difficult for many people to understand.[14]

Moreover, retaining memories of difficult written materials, like summary plan descriptions, read over a decade ago is unrealistic. The more complex a document, the less a person will remember. *See* A. Baddeley, *Working Memory: Looking Back And Looking Forward*, 4 NEUROSCIENCE 829, 832 (Oct. 2003). The abilities of individuals to process complex financial information may affect retention and understanding of their pension plans. *See* Sewin Chan & Ann Huff Stevens, *What You Don't Know Can't Help You: Pension Knowledge and Retirement Decision Making*, NATIONAL BUREAU OF ECONOMIC RESEARCH, Working Paper No. 10185 (Dec. 2003), at 24. Moreover, an individual's memory of how something is learned is imprecise.[15] Finally, recollection of

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college level); Jerry Haar and Sharon Kossack, *Employee Benefit Packages: How Understandable Are They?*, 27:2 J. BUS. COMM. 185, 190 (Mar. 1990) (assessment of samples of benefits packages from Fortune 500 corporations showed that both the documents' readability and comprehensibility levels far exceed that of the average worker).

[14] *See* Financial Industry Regulatory Authority Investor Education Foundation, *Financial Capability in the United States: National Survey* at 18 (Dec. 2009), http://www.finrafoundation.org (less than one-third correctly answered all three questions about interest rates, inflation and risk diversification).

[15] See n. 9 & 11, *supra*.

missing information in a summary plan description like reductions in benefits requires proof of a negative. The proximate connection between reading the summary plan description, remembering that information was missing, and taking a certain action is impossible to prove years later.

Given that many participants already have trouble understanding a summary plan description that is written correctly and accurately, a legal rule that they must be able to infer that certain provisions of a lengthy summary plan description are inaccurate, misleading, or missing, and speculate about what they would have done with full disclosure is unrealistic.. Individuals are particularly vulnerable to exploitation and manipulation when disclosures are inadequate and misleading. *See* A. Lusardi, O. Mitchell & V. Curto, *Financial Literacy and Financial Sophistication in the Older Population: Evidence from the 2008 HRS*, MRRC Working Paper 2009-216 at 8 (2009), *cf.* Luchak & Gunderson, at 650-51, 664-65 (employers can take advantage of ignorance concerning pension plan provisions, enabling redistribution of benefits to more valued workers). Significantly, the long-term financial impact on participants who receive inaccurate or misleading pension information is considerable. *See* Mitchell, at 36 (myopic and suboptimal decisions due to poor information regarding when to change jobs, when to retire, or how much to save for retirement). CIGNA's approach necessarily thwarts employees who are average plan participants from being able to recover

their benefits;[16] indeed, it would thwart recoveries by everyone except the extraordinary few.

Most significantly, under CIGNA's approach, plan administrators would have no incentive to comply with the statutory and regulatory requirements that summary plan descriptions be understandable because the Department of Labor does not review the summaries for compliance. *See* ERISA Advisory Council, *Report of the Working Group*; *see generally* Luchak & Gunderson, at 650-51, 664-65 (many employees are not well-informed about eligibility, generosity and structure of their pension plans); Mitchell, at 35-36.

For all of these reasons, a standard of individualized detrimental reliance or prejudice will be impossible for most individuals to meet.[17]

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[16] Although 84.6 percent of adults over age 25 had a high school or higher degree in 2003, National Center for Education Statistics, *Digest of Education Statistics, 2009* at Table 8 (Apr. 2010), http://nces.gov/programs/digest/d09/tables/dt09_008.asp?referrer+report, 43 percent of adults fell into the Basic or Below Basic literacy level, signifying difficulty in reading, comprehension, computation, communication, writing, and problem solving. U.S. Dep't of Education, National Center for Education Statistics, Institute of Education Sciences, *Literacy in Everyday Life: Results From the 2003 National Assessment of Adult Literacy* at 13 (Apr. 2007), http://nces.ed.gov/naal.

[17] At no time did CIGNA argue that it had committed a "scriveners' error." In such cases, the plan must show by objective, convincing evidence both that there was a drafting error and the error was inconsistent with plan participants' expected benefits. *See, e.g., Young v. Verizon's Bell Atl. Cash Balance Plan,* 2010 U.S. App. LEXIS 16483 (7th Cir. 2010); *see generally* David A. Pratt & Martin M. Heming, *Focus*

Compare with Young v. Verizon's Bell Atl. Cash Balance Plan, 2010 U.S. App. LEXIS 16483 (7th Cir. 2010) (requiring plan to prove the reasonable expectations of the class, not each individual participant). Instead, the Court should adopt a standard for determining which plan document controls when there is a conflict between them which is consistent with both the language of ERISA and its purposes.

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*On...Scrivener's Errors,*15 J. PENSION BENEFITS 19 (Summer 2008).

CONCLUSION

For the foregoing reasons, the Court should affirm the decision of the Court of Appeals on this issue.

Respectfully submitted,

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October 22, 2010

AMICUS CURIAE BRIEF

No. 09-804

IN THE

Supreme Court of the United States

CIGNA CORPORATION AND CIGNA PENSION PLAN,
Petitioners,

v.

JANICE C. AMARA, GISELA R. BRODERICK, ANNETTE S. GLANZ, individually and on behalf of all others similarly situated,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR NATIONAL EMPLOYMENT LAWYERS ASSOCIATION, THE PENSION RIGHTS CENTER, AND UNITED POLICYHOLDERS, AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF THE *AMICI*	1
SUMMARY OF ARGUMENT	3
ARGUMENT	8
I. THIS COURT SHOULD ADOPT A RULE THAT WHERE THERE IS A CONFLICT BETWEEN PLAN DOCUMENTS, THE MORE PARTICIPANT-FAVORABLE DOCUMENT CONTROLS, OR, IN THE ALTERATIVE, THAT THE SPD CONTROLS	8
A. SPDs Are Plan Documents That Govern The Plan.	8
B. Where There Is A Conflict Between Plan Documents, The More Participant-Favorable Document Should Control	10
C. Alternatively, Where An SPD And Another Plan Document Conflict, The SPD Should Control	19
II. PARTICIPANTS SHOULD NOT BE OBLIGED TO ESTABLISH DETRIMENTAL RELIANCE, LIKELY HARM, OR ANYTHING BEYOND A CLEAR CONFLICT BETWEEN TWO PLAN DOCUMENTS	22
A. Requiring Participants To Demonstrate Reliance Or Some Other Individualized Standard Precludes Uniform Plan Administration.	24

TABLE OF CONTENTS—Continued

Page

B. A Detrimental Reliance Requirement Is Contrary To ERISA, Which Creates An Objective Standard. 25

C. A Detrimental Reliance Standard Is Contrary To Real-World Behavior. 28

D. A Detrimental Reliance Requirement Would, As A Practical Matter, Foreclose Relief Even For Those Few Participants Who Could Satisfy This Heavy Burden, Thus Violating the Policies Underlying ERISA..... 30

CONCLUSION 33

TABLE OF AUTHORITIES

CASES Page

Aetna Health, Inc. v. Davila,
542 U.S. 200 (2004).....3, 25, 32

Alessi v. Raybestos-Manhattan, Inc.,
451 U.S. 504 (1981)..... 23

Amchem Products, Inc. v. Windsor,
521 U.S. 591 (1997)..... 31

Armistead v. Vernitron Corp.,
944 F.2d 1287 (6th Cir. 1991)..... 9

Banuelos v. Constr. Laborers' Trust Funds for S. Cal.,
382 F.3d 897 (9th Cir. 2004)..... 16

Barnes v. Indep. Auto. Dealers Ass'n of Cal. Health & Welfare Benefit Plan,
64 F.3d 1389 (9th Cir. 1995)..... 16

Bd. of Trustees of the CWA/ITU Negotiated Pension Plan v. Weinstein,
107 F.3d 139 (2d Cir. 1997)..... 16

Bergt v. Retirement Plan for Pilots Employed by MarkAir, Inc.,
293 F.3d 1139 (9th Cir. 2002).....10, 12, 16

Branch v. G. Bernd Co.,
955 F.2d 1574 (11th Cir. 1992)..... 30

Bridge v. Phoenix Bond & Indem. Co.,
553 U.S. 639 (2008)..... 23

Burke v. Kodak Ret. Income Plan,
336 F.3d 103 (2d Cir. 2003).....7, 16, 21

Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. & Research Found.,
334 F.3d 365 (3d Cir. 2003).....13, 19, 22

TABLE OF AUTHORITIES—Continued

Page

Califano v. Yamasaki,
442 U.S. 682 (1979) 32

Cent. Jersey Dodge Truck Ctr., Inc. v. Sightseer Corp.,
608 F.2d 1106 (6th Cir. 1979) 14

Cent. Laborers' Pension Fund v. Heinz,
541 U.S. 739 (2004) 1

Chiles v. Ceridian Corp.,
95 F.3d 1505 (10th Cir. 1996) 21

Conkright v. Frommert,
130 S. Ct. 1640 (2010) 1, 2, 24

Curtis-Wright Corp. v. Schoonejongen,
514 U.S. 73 (1995) 8

Delgrosso v. Spang & Co.,
769 F.2d 928 (3d Cir. 1985) 9

Doe v. Travelers Ins. Co.,
167 F.3d 53 (1st Cir. 1999) 9

Donovan v. Mazzola,
716 F.2d 1226 (9th Cir. 1983) 17

Duldulao v. Saint Mary of Nazareth Hosp. Ctr.,
505 N.E.2d 314 (Ill. 1987) 14

Edwards v. State Farm Mut. Auto. Ins. Co.,
851 F.2d 134 (6th Cir. 1988) 20, 22

Eisenberg v. Gagnon,
766 F.2d 770 (3d Cir. 1985) 32

Faircloth v. Lundy Packing Co.,
91 F.3d 648 (4th Cir. 1996) 9

TABLE OF AUTHORITIES—Continued

Page

Feifer v. Prudential Ins. Co. of Am.,
306 F.3d 1202 (2d Cir. 2002) 13

Firestone Tire & Rubber Co. v. Bruch,
489 U.S. 101 (1989) 1, 2, 13, 14, 17

Gen. Tel. Co. of the Sw. v. Falcon,
457 U.S. 147 (1982) 32

Glocker v. W.R. Grace & Co.,
974 F.2d 540 (4th Cir. 1992) 16

Goldinger v. Datex-Ohmeda Cash Balance Plan,
701 F. Supp. 2d 1205 (W.D. Wash. 2010). 29

Gulf Oil Co. v. Bernard,
452 U.S. 89 (1981) 29

Hansen v. Cont'l Ins. Co.,
940 F.2d 971 (5th Cir. 1991) 11, 20

Hardt v. Reliance Standard Life Ins. Co.,
130 S. Ct. 2149 (2010) 3

Heffner v. Blue Cross & Blue Shield of Ala., Inc.,
443 F.3d 1330 (11th Cir. 2006) 30

Heidgerd v. Olin Corp.,
906 F.2d 903 (2d Cir. 1990) 21

Helwig v. Kelsey-Hayes Co.,
93 F.3d 243 (6th Cir. 1996) 19

Hicks v. Fleming Cos.,
961 F.2d 537 (5th Cir. 1992) 24

Humana v. Forsyth,
525 U.S. 299 (1999) 3

TABLE OF AUTHORITIES—Continued

Page

In re Workers' Compensation,
130 F.R.D. 99 (D.Minn. 1990)..... 32

Kennedy v. Plan Adm'r for DuPont Savings & Inv. Plan,
129 S. Ct. 865 (2009)..... 8, 24

Kosakow v. New Rochelle Radiology Assoc. P.C.,
274 F.3d 706 (2d Cir. 2001)..... 9

Kunin v. Benefit Trust Life Insurance Co.,
910 F.2d 534 (9th Cir. 1990)..... 18

LaRue v. DeWolff, Boberg & Assocs.,
552 U.S. 248 (2008)..... 1, 2

Lee v. Blue Cross/Blue Shield of Ala.,
10 F.3d 1547 (11th Cir. 1994)..... 18

Mace v. Van Ru Credit Corp.,
109 F.3d 338 (7th Cir. 1997)..... 31

Massella v. Blue Cross & Blue Shield of Conn., Inc.,
936 F.2d 98 (2d Cir. 1991)..... 12, 18

Mastrobuono v. Shearson Lehman Hutton, Inc.,
514 U.S. 52 (1995)..... 15

McGee v. Equicor-Equitable HCA Corp.,
953 F.2d 1192 (10th Cir. 1992)..... 17, 26

McKnight v. S. Life & Health Ins. Co.,
758 F.2d 1566 (11th Cir. 1985)..... 20

McMillan v. Parrott,
913 F.2d 310 (6th Cir. 1990)..... 24

TABLE OF AUTHORITIES—Continued

	Page
Mertens v. Hewitt Assocs., 508 U.S. 248 (1993)	23
Metro. Life Ins. Co. v. Glenn, 128 S. Ct. 2343 (2008)	3
Nachman Corp. v. Pension Benefit Guaranty Corp., 446 U.S. 359 (1980)	23
Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987)	25
Pratt v. Petroleum Prod. Mgmt., Inc. Employee Sav. Plan & Trust, 920 F.2d 651 (10th Cir. 1990)	14
Rose City v. Nutmeg Ins. Co., 931 F.2d 13 (5th Cir. 1991)	14
Rush Prudential HMO, Inc. v. Moran, 536 U.S. 355 (2002)	3, 24
Simonia v. Glendale Nissan / Infiniti Disability Plan, 608 F.3d 1118 (9th Cir. 2010)	31
Stahl v. Tony's Building Materials, Inc., 875 F.2d 1404 (9th Cir. 1989)	25
Sturges v. HyVee Employee Ben. Plan, 991 F.2d 479 (8th Cir. 1993)	17
Telex Corp. v. Balch, 382 F.2d 211 (8th Cir. 1967)	14
Tolle v. Carroll Touch, Inc., 977 F.2d 1129 (7th Cir. 1992)	13

TABLE OF AUTHORITIES—Continued

Page

Truelsen v. European Health Spa of Neb., Inc., 561 F.2d 169 (8th Cir. 1977) 14

UNUM Life Ins. Co. of Am. v. Ward, 526 U.S. 358 (1999) 1

Varity Corp. v. Howe, 516 U.S. 489 (1996) 1, 18

Washington v. Murphy Oil USA, Inc., 497 F.3d 453 (5th Cir. 2007) 5, 8, 13, 19, 22

Wilson v. Sw. Bell Tel., 55 F.3d 399 (8th Cir. 1995) 25

STATUTES

15 U.S.C. § 78 23
18 U.S.C. § 1962 23
29 U.S.C. § 204 26
26 U.S.C. § 501 2
29 U.S.C. § 626 26
29 U.S.C. § 1001 ..... 4, 32
29 U.S.C. §§ 1001-1461 2
29 U.S.C. § 1022 .....6, 12, 15, 20, 25, 27
29 U.S.C. § 1024 9
29 U.S.C. § 1102 12
29 U.S.C. § 1104 8
29 U.S.C. § 1132 .....7, 9, 11

LEGISLATIVE HISTORY

H.R. REP. NO. 93-533 (1973), *reprinted in* 1978 U.S.C.C.A.N. 4649) 14, 15, 18

TABLE OF AUTHORITIES—Continued

Page

S. REP. NO. 93-127 (1973), *reprinted in* I LEGISLATIVE HISTORY OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, at 615 (Comm. Print 1976) 18

REGULATIONS

29 C.F.R. § 2520 25
29 C.F.R. § 2590 26
29 C.F.R. § 1625.22 26

OTHER AUTHORITIES

Williston on Contracts 14
John H. Langbein, *Trust Law as Regulatory Law*, 101 NW. U. L. REV. 1315 (2007) 17
OLIVER WENDELL HOLMES, THE COMMON LAW 117 (1881) 15
Restatement (Second) of Trusts § 170(1) (1959) 18

INTEREST OF THE *AMICI*[1]

The National Employment Lawyers Association ("NELA") is the largest professional membership organization in the country comprised of lawyers who represent employees in labor, employment, and civil rights disputes. NELA and its sixty-eight state and local affiliates have a membership of over 3,000 attorneys committed to working for those who have been illegally treated in the workplace. NELA strives to protect the rights of its members' clients, and regularly supports precedent-setting litigation affecting the rights of individuals in the workplace. NELA filed or participated in filing *amicus curiae* briefs in this Court in such cases as *Conkright v. Frommert*, 130 S. Ct. 1640 (2010); *LaRue v. DeWolff, Boberg & Assocs.*, 552 U.S. 248 (2008); *Cent. Laborers' Pension Fund v. Heinz*, 541 U.S. 739 (2004); *UNUM Life Ins. Co. of Am. v. Ward*, 526 U.S. 358 (1999); *Varity Corp. v. Howe*, 516 U.S. 489 (1996); and *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989).

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[1] Pursuant to Supreme Court Rule 37.6, the *amici curiae* state that no person or entity other than the *amici* and their undersigned counsel made a monetary contribution to the preparation or submission of this brief. No attorney for any party to this matter authored this brief in whole or in part. The parties have separately consented to the filing of this brief. Undersigned counsel Ellen M. Doyle and William T. Payne represent plaintiff-appellants in a case pending in the United States Court of Appeals for the Ninth Circuit, *Skinner v. Northrop Grumman Retirement Plan B*, No. 10-55161. This appeal raises the question of whether participants must prove reliance in order to recover under an SPD that conflicts with another plan document. *Skinner* has been stayed pending disposition of the instant appeal, and this Court's disposition of the instant appeal will likely have an impact on the ultimate resolution of the *Skinner* case.

The Pension Rights Center is a Washington, D.C., nonprofit consumer organization, which has as its mission the protection and promotion of retirement security for workers, retirees and their families. For thirty-four years, the Center has provided information and assistance to thousands of participants and beneficiaries and has represented their interests before Congress the federal administrative agencies and the courts. The Pension Rights Center filed or participated in filing *amicus curiae* briefs in this Court in such cases as *LaRue*, 552 U.S. 248; and *Conkright*, 130 S. Ct. 1640; and *Firestone*, 489 U.S. 101 (1989).

United Policyholders ("UPH") is a single-issue, non-profit organization founded in 1991. The organization's mission is to educate the public, legislators and courts on insurance issues and consumer rights and to help policyholders secure fair and prompt claim settlements. These policy holders include participants in employee benefit plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461. UPH is a recognized charity with tax-exempt status under the Internal Revenue Code, 26 U.S.C. § 501(c)(3) (2010), and is funded by donations and grants from individuals, businesses and foundations. UPH protects the interests of and presents the positions of policyholders through participation as *amicus curiae* in insurance-related cases throughout the country. UPH

filed or participated in filing *amicus curiae* briefs in this Court in such cases as *Hardt v. Reliance Standard Life Ins. Co.*, 130 S. Ct. 2149 (2010); *Metro. Life Ins. Co. v. Glenn*, 128 S. Ct. 2343 (2008); *Aetna Health, Inc. v. Davila*, 542 U.S. 200 (2004); *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355 (2002); and *Humana v. Forsyth*, 525 U.S. 299 (1999).

Resolution of the issues in this case is of great importance to *amici* because it is imperative that participants have meaningful recourse under ERISA to protect and enforce their rights under employee benefit plans. Petitioners CIGNA Corporation and the CIGNA Pension Plan (collectively, "CIGNA") advocate a result that would virtually eliminate that recourse whenever ERISA plan documents are in conflict, placing a near-impossible burden on participants to establish individualized detrimental reliance. *Amici* respectfully submit that CIGNA's remedy-eliminating standard should be rejected as contrary to ERISA. Rather, consistent with ERISA, participants should be allowed to take advantage of the more participant-favorable plan document.

SUMMARY OF ARGUMENT

In this case, the Court must decide the proper course when two controlling ERISA plan documents conflict. The parties, Petitioner CIGNA and the Respondent plan participants, present the Court with two alternative resolutions of this problem. *Amici* submit that a bright-line approach more closely comports with ERISA. The Court should hold that when two plan documents are at odds, the more participant-favorable one controls, and that participants may obtain the benefits promised in that document without having to prove either detrimental reliance, as

CIGNA urges, or likely harm, the standard advocated by Respondents.

Under CIGNA's approach, which is followed in the Eleventh Circuit, an ERISA plan participant may recover on the basis of a more participant-favorable summary plan description ("SPD") only if he or she makes an individualized showing of "detrimental reliance." This standard eviscerates ERISA's remedial function. When faced with conflicting plan provisions, a participant must take concrete steps to affirmatively "rely" on the particular SPD term to establish detrimental reliance and thus obtain the promised benefits. The participant must also be in a position years or decades later to prove that reliance to a court. Further, even if a few participants could meet this imposing standard, relief would still remain elusive because the individualized nature of the required showing would almost always preclude class treatment, thus rendering it unlikely that the participant could find an attorney to bring the case. This would undercut one of the main goals of ERISA, as set forth by Congress in the statute itself, to provide "ready access to the Federal courts." ERISA section 2(b), 29 U.S.C. § 1001(b).

The Respondent-Participants advocate the approach taken by the Second Circuit in this case. The Second Circuit allows participants to recover based on a somewhat lesser showing of "likely harm." It is not impossible to establish likely harm—plaintiffs here were able to do so, and a class was certified. Certainly, application of the Second Circuit standard results in more participants receiving their promised benefits than the remedy-precluding standard that CIGNA favors.

However, there is a bright-line approach[2] that protects participants in the event of conflicting plan provisions by enforcing the more participant-favorable provision as contemplated by ERISA section 502(a)(1)(B). This standard achieves uniformity and most closely comports with ERISA's language and underlying policy. Under the first prong of this approach, the more participant-favorable plan provision controls. Under the second prong, plan participants are accorded the benefit of the more favorable provision; no further showing need be made. It is enough that an employer drafted a controlling plan document that accorded particular benefits. Courts should award those promised benefits, regardless of whether a plaintiff can establish detrimental reliance or likely harm.

As to the first prong, the more participant favorable provision should govern, regardless of whether it is in the SPD or some other plan document. This standard furthers a fundamental purpose of ERISA—ensuring that promises made to plan participants are kept. This standard adheres most closely to the fundamental principle applied in the common law of contracts and trusts: the language of governing documents is to be construed against the drafter. The Ninth Circuit follows this approach, applying the more participant-favorable plan document regardless of whether it is an SPD or some other plan document.

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[2] Indeed, as construed by the Fifth Circuit, there is a five-way circuit split on this issue. *Washington v. Murphy Oil USA, Inc.*, 497 F.3d 453, 458 n.1 (5th Cir. 2007).

A number of circuits have stated that the SPD always controls. Under section 102(a) of ERISA, 29 U.S.C. § 1022, employers must provide their employees with the SPD, and the SPD must "be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." Unlike the SPD, other plan documents are not even provided to employees unless specifically requested; nor are they drafted in a way that most employees can understand. Because the SPD is participants' primary source of information, many courts appear to apply a bright-line rule that, in the event of a conflict, elevates the SPD over other plan documents. It is noteworthy, however, that these circuits were dealing exclusively with SPD provisions that were more favorable to participants and so did not have occasion to consider the proper standard when a provision of another plan document is more favorable.

Regardless of whether courts enforce the more participant-favorable plan provision or always enforce the SPD provision, the crucial point is that no additional showing should be required, particularly no showing of detrimental reliance. The employer makes a promise in a controlling plan document, most often the SPD. It is unreasonable to require that employees prove years or decades after an SPD was issued that they relied on a specific SPD provision that was inconsistent with a provision in some other plan document, most likely one that was never distributed. According to CIGNA, to meet the detrimental reliance standard, a participant must establish that she did in fact "make a detrimental employment or retirement decision that she would

not otherwise have made if she had known the actual terms of the plan." Br. for Pet'rs. at 38-39.

CIGNA's standard not only allows but encourages employers to draft SPD provisions that are inconsistent with other less participant-favorable plan provisions which are likely to be unpopular with employees. These unfavorable provisions may be buried in a technical and complex plan document retained in a file drawer at the employer's corporate headquarters and never provided to employees.

Fewer employees will be denied a remedy under the Second Circuit standard advocated by Respondents, which requires a showing of "likely harm." To establish likely harm, a plan participant or beneficiary must show that they were likely to have been harmed as a result of a deficient SPD. *Burke v. Kodak Ret. Income Plan*, 336 F.3d 103, 113 (2d Cir. 2003), *cert. denied*, 540 U.S. 1105 (2004). Once a participant makes this initial showing, the employer may rebut it through evidence that the deficient SPD was in effect a harmless error. *Id.*

No showing of detrimental reliance or likely harm is expressly or impliedly required by ERISA. Indeed, section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), ERISA's provision for enforcing rights under plan documents, requires no such showing. Participants should be entitled to the benefits granted in the written governing documents. When those documents conflict, this Court should apply a rule that construes conflicts against the draftsman, *i.e.*, the employer. Participants should be entitled to the benefits they were promised, regardless of what exactly they can or cannot show about their own personal knowledge of the provisions and their reliance upon them. For as the Fifth Circuit concludes, "Any other rule

would be, as the Congress recognized, grossly unfair to employees and would undermine ERISA's requirement of an accurate and comprehensive summary." *Washington,* 497 F.3d at 458 (quoting *Weir v. Fed. Asset Disposition Ass'n*, 123 F.3d 281, 286 (5th Cir. 1997)).

ARGUMENT

I. This Court Should Adopt A Rule That Where There Is A Conflict Between Plan Documents, The More Participant-Favorable Document Controls, Or, In The Alterative, That The SPD Controls.

A. SPDs Are Plan Documents That Govern The Plan.

Respondent-Participants demonstrate in their brief why SPDs are among the "plan documents" that govern a plan, and *amici* adopt Respondents' arguments on this point. *See* Resps.' Br. at 14, 21-26. In summary form, section 404(a)(1)(D) of ERISA mandates that plan fiduciaries carry out the terms set forth in the "documents and instruments governing the plan insofar [as] consistent with the provisions" title I of ERISA. 29 U.S.C. § 1104(a)(1)(D).

SPDs are among the "documents and instruments governing the plan" within the meaning of ERISA. *Kennedy v. Plan Adm'r for DuPont Savings & Inv. Plan*, 129 S. Ct. 865, 867 (2009) (citing *Curtis-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 84 (1995)). As Respondents show, the courts of appeals also have unanimously held that SPDs are among the "docu-

ments and instruments governing the plan" within the meaning of ERISA.[3] Resps.' Br. at 39.

The simple and basic fact that SPDs are among the plan documents that specify "the terms of the plan" defeats CIGNA's lengthy argument that participants have no cause of action under ERISA section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). That provision allows a civil action by a "participant or beneficiary" to "recover benefits due to him under the terms of his plan," and benefits due under an SPD *are* benefits due under the plan. *See* Resps.' Br. at 38.

Further, when construing ERISA section 104(b)(2), courts of appeals have routinely held that SPDs are among the formal or legal documents pursuant to which plans are operated. *See Doe v. Travelers Ins. Co.*, 167 F.3d 53, 59-60 (1st Cir. 1999); *Bd. of Trustees of the CWA/ITU Negotiated Pension Plan v. Weinstein*, 107 F.3d 139, 142 (2d Cir. 1997); *Faircloth v. Lundy Packing Co.*, 91 F.3d 648, 658 (4th Cir. 1996). Other statutorily recognized plan documents are described as including bargaining agreements, trust agreements, contracts, or other instruments under which the plan was established or is operated. 29 U.S.C. § 1024.

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[3] While most cases involving two conflicting plan documents include an SPD, it could also be the case that neither of the conflicting documents is an SPD. *See Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1298 (6th Cir. 1991) (recognizing that a medical insurance plan can be a governing plan document); *Delgrosso v. Spang & Co.*, 769 F.2d 928, 935-56 (3d Cir. 1985) (noting that a collectively bargained pension agreement can be one of the governing plan documents); *see also Kosakow v. New Rochelle Radiology Assoc. P.C.*, 274 F.3d 706, 737 (2d Cir. 2001) (holding that a severance pay policy manual was a plan document).

B. Where There Is A Conflict Between Plan Documents, The More Participant-Favorable Document Should Control.

Where there is a clear conflict between the governing documents of an ERISA plan, the more participant-favorable document—generally, the SPD—should control. This approach, followed by the Ninth Circuit, upholds ERISA itself, and it incorporates the finely tuned presumptions and principles of contract and trust law embodied in ERISA.

In *Bergt v. Retirement Plan for Pilots Employed by MarkAir, Inc.*, 293 F.3d 1139 (9th Cir. 2002), the Ninth Circuit held that when the unambiguous provisions of a particular plan document are more favorable to plan participants than SPD provisions, the formal plan controls. *Id.* at 1145. In reaching this conclusion, the Ninth Circuit relied on five cases from five other courts of appeals that have addressed this issue. In all of these cases,

> the SPD conflicted with, and was more favorable to the employee, than the plan master document. Instead of relying on extrinsic evidence, however, these courts held that it would be unfair to have the employees bear the burden of a conflicting SPD and plan master document and, thus, decided that the provision *more favorable* to the employee controlled . . . We follow this same reasoning to conclude that when the plan master document is more favorable to the employee than the SPD, and unambiguously allows for eligibility of an employee, it controls, despite contrary unambiguous provisions in the SPD.

Id. (citations omitted).

The court reasoned:

> "Any burden of uncertainty created by careless or inaccurate drafting of the summary must be placed on those who do the drafting, and who are most able to bear that burden, and not on the individual employee, who is powerless to affect the drafting of the summary or the policy and ill equipped to bear the financial hardship that might result from a misleading or confusing document. Accuracy is not a lot to ask."

Id. (quoting *Hansen v. Cont'l Ins. Co.*, 940 F.2d 971, 982 (5th Cir. 1991)). In *Hansen*, the Fifth Circuit went on to explain: "And it is especially not a lot to ask in return for the protection afforded by ERISA's preemption of state law causes of action—causes of action which threaten considerably greater liability than that allowed by ERISA." 940 F.2d at 982. In enacting ERISA, Congress balanced competing interests, granting broad preemption of state law claims and thus affording employers protection from compensatory and punitive damage awards, while also empowering participants to enforce their rights under plan documents.

The Ninth Circuit's approach is consistent with the statutory text. Under ERISA section 502(a)(1)(B), a participant or beneficiary may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). Participants therefore have a right to enforce plan documents, including SPDs. When SPD terms conflict with a provision in another plan document, participants should be allowed to "recover benefits" or

"enforce [their] rights" under the plan's most participant-favorable provision.

While participants may enforce all plan documents, SPDs play a special role. Other plan documents tend to be highly technical. The SPD, in contrast, must "be written in a manner calculated to be understood by the average plan participant," and "sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." ERISA § 102(a), 29 U.S.C. § 1022(a). Further, while SPDs must be distributed to participants, *id.*, other controlling plan documents need not be distributed unless a participant specifically requests them.

Because SPDs must be drafted in an "accurate and comprehensive" manner and "furnished to participants and beneficiaries," they are the principal vehicle that apprises participants of their benefits. ERISA § 102(a), 29 U.S.C. § 1102(a). So long as SPDs are accurate, they will sufficiently and comprehensively describe the benefits set forth in the plan document, and there will be no inconsistencies. However, when an SPD purports to terminate rights accorded by another plan document, it is inaccurate. Because ERISA mandates that SPDs be accurate, participants should not be bound by an inaccurate SPD that is less favorable to them than another plan document. The Ninth Circuit's position that the more participant-favorable plan document controls thus most closely comports with ERISA.

According controlling status to the most employee-favorable plan document—as does the court in *Bergt*—is also consistent with this Court's jurisprudence and ERISA's underlying policies. *Amici* of course recognize that when interpreting ambiguous

terms in an ERISA plan document, a trustee's interpretation is entitled to deference so long as the governing documents have granted the employer this discretion. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989). But discretion to interpret an ambiguous term is a far cry from *carte blanche* to entirely disregard unambiguous conflicts between two governing documents. *Firestone* and its progeny do not give employers latitude to pick and choose among competing unambiguous terms in separate plan documents on the basis of what suits the employer's interests.

Amici submit that in the particular context of reviewing plan documents that unambiguously conflict, the Court should be guided by the long-established contract law principle of *contra proferentem*. While ERISA "abounds with the language and terminology of trust law," *id.* at 110, ERISA claims are also contractual in nature.[4] *Washington*, 497 F.3d

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[4] There is no doubt that federal courts should look to the common law of contracts in deciding ERISA benefit claims. *E.g.*, *Tolle v. Carroll Touch, Inc.*, 977 F.2d 1129, 1133 (7th Cir. 1992) ("When someone raises a Section 502(a)(1)(B) claim, he or she is essentially asserting his or her contractual rights under an employee benefit plan . . . Not surprisingly, this court has concluded that Section 502(a)(1)(B) claims are creatures of contract law.") (citations omitted); *see also Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. & Research Found.*, 334 F.3d 365, 381 (3d Cir. 2003) ("Claims for ERISA plan benefits under ERISA § 502(a)(1)(B) are contractual in nature."); *Feifer v. Prudential Ins. Co. of Am.*, 306 F.3d 1202, 1210 (2d Cir. 2002) ("A claim under § 1132(a)(1)(B), 'in essence, is the assertion of a contractual right.' In interpreting plan terms for purposes of claims under § 1132(a)(1)(B), we apply a federal common law of contract, informed both by general principles of contract law and by ERISA's purposes as manifested in its specific provisions.") (citations omitted).

at 458. It is black-letter contract law that when an ambiguity in a plan arises due to conflicting terms, the terms should be construed against the drafter. *See, e.g., City of Rose City v. Nutmeg Ins. Co.*, 931 F.2d 13, 15 (5th Cir. 1991). Termed *contra proferentem*, this rule of construction applies when contract provisions are at odds. Notably, *contra proferentem* includes no requirement that detrimental reliance be established.

Contra proferentem is a fundamental common-law precept. *See Cent. Jersey Dodge Truck Ctr., Inc. v. Sightseer Corp.*, 608 F.2d 1106, 1110-11 (6th Cir. 1979) (construing Michigan law); *Truelsen v. European Health Spa of Neb., Inc.*, 561 F.2d 169, 170 (8th Cir. 1977) (construing Nebraska contract "most strongly against the draftsman"); *Telex Corp. v. Balch*, 382 F.2d 211, 216 (8th Cir. 1967) (construing Minnesota law); *Duldulao v. Saint Mary of Nazareth Hosp. Ctr.*, 505 N.E.2d 314, 319 (Ill. 1987).

Application of *contra proferentem* makes particular sense in the context of an unambiguous SPD provision. Congress elevated SPDs (as well as summaries of material modification) because these serve the all-important function of **disclosure**. In enacting the ERISA disclosure provisions, Congress intended to ensure that "'the individual participant knows exactly where he stands with respect to the plan.'" *Firestone*, 489 U.S. at 118 (quoting H.R. Rep. No. 93-533, at 11 (1973), *reprinted in* 1978 U.S.C.C.A.N.

[Footnote continued from previous page]

Such contract principles include the rule of unilateral contracts, under which action or forbearance, rather than a signature, serve as acceptance. *See Pratt v. Petroleum Prod. Mgmt., Inc. Employee Sav. Plan & Trust*, 920 F.2d 651, 661 (10th Cir. 1990); *see also* 1 Williston on Contracts § 1:17.

4649). Further, a fundamental tenet of ERISA is "adequate communication to participants"; this is necessary "if the private pension promise is to become real rather than illusory." H.R. Rep. No. 93-533, at 10, *reprinted in* 1974 U.S.C.C.A.N. 4639, at 4648.

To these ends, section 102 of ERISA sets forth specific disclosure rules. Section 102 provides that an SPD must be distributed to each participant and must accurately disclose benefit rights and obligations under the plan, including circumstances that cause benefits losses. It must be "written in a manner calculated to be understood by the average plan participant." ERISA § 102(a)-(b), 29 U.S.C. § 1022(a)-(b).

As this Court has reasoned, a party such as CIGNA "cannot overcome the common-law rule of contract interpretation that a court should construe ambiguous language against the interest of the party that drafted it. [It] drafted an ambiguous document, and [it] cannot now claim the benefit of the doubt." *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 62-63 (1995) (citations omitted). This presumption against the drafter both promotes fairness and discourages sloppy drafting. *See* OLIVER WENDELL HOLMES, THE COMMON LAW 117 (1881) ("[I]t may be considered the safest way to secure care is to throw the risk upon the person who decides what precautions shall be taken.").

CIGNA concurs with the Second Circuit's reasoning that the "'consequences of an inaccurate SPD must be placed on the employer,' because '[t]he individual employee is powerless to affect the drafting and less equipped to absorb the financial hardship of the employer's errors.'" Br. for Pet'rs. at 37 (quoting

Burke, 336 F.3d at 113, and stating that this "is no doubt true"). While CIGNA thus embraces the rule of *contra proferentem*, it leaps to the conclusion that this rule "is why [only] an employee who detrimentally relies on an SPD is entitled to recover for her injury." Br. for Pet'rs. at 37. CIGNA does not explain its logic, and it is contrary to the rule of *contra proferentem*, which includes no reliance requirement.

In *Bergt*, the Ninth Circuit cited the need to "'construe ambiguities in an ERISA plan against the drafter.'" 293 F.3d at 1145 (quoting *Barnes v. Indep. Auto. Dealers Ass'n of Cal. Health & Welfare Benefit Plan*, 64 F.3d 1389, 1393 (9th Cir. 1995)). As the Ninth Circuit later held, "Courts will generally bind ERISA defendants to the more employee favorable of two documents-even if one is erroneous." *Banuelos v. Constr. Laborers' Trust Funds for S. Cal.*, 382 F.3d 897, 904 (9th Cir. 2004).

This principle applies with equal force to the SPD and to other plan documents, both of which are documents or instruments governing the plan. Indeed, it is particularly important that SPDs be construed against their drafters since these are the plan documents actually provided to participants and most likely to be reviewed by them.

The Fourth Circuit has relied on the same rationale, explaining in *Glocker v. W.R. Grace & Co.*, 974 F.2d 540, 542-43 (4th Cir. 1992), that when an employer represents to its employees that a particular plan document which is not the SPD governs questions about benefits, the employer cannot repudiate this representation and rely on SPD statements that are less favorable to participants. The court was careful to point out, however, that the plan does not

always prevail over the SPD simply because the SPD includes such a disclaimer. Rather, employees can have the benefit of a participant-favorable SPD that ostensibly designates another document as the primary document. Thus, "where the [SPD] favors the employer, the employer cannot disavow a disclaimer in the [SPD] representing that the Plan controls." *Id.* at 543. But "where the Plan favors the employer, the employer cannot invoke the Plan by relying on a disclaimer in the [SPD] that, contrary to the intent of Congress, designates the Plan as the controlling document." *Id. Accord Sturges v. HyVee Employee Ben. Plan*, 991 F.2d 479, 480-81 (8th Cir. 1993); *McGee v. Equicor-Equitable HCA Corp.*, 953 F.2d 1192, 1201 (10th Cir. 1992).

Another court makes an important point with regard to the rule of *contra proferentem*, explaining that to ignore this rule "'would require us to . . . afford less protection to employees and their beneficiaries than they enjoyed before ERISA was enacted,' a result that would be at odds with the congressional purposes of promoting the interests of employees and beneficiaries and protecting *contractually* defined benefits." *Massella v. Blue Cross Blue & Shield of Conn., Inc.*, 936 F.2d 98, 107 (2d Cir. 1991) (quoting *Firestone*, 489 U.S. at 113-14).

As noted, ERISA borrows not only from contract law, but also from the law of trusts. *Firestone*, 489 U.S. at 110-114. Because of its regulatory purposes, however, *see* John H. Langbein, *Trust Law as Regulatory Law*, 101 NW. U. L. REV. 1315, 1336 (2007), ERISA is generally "more exacting" than "the common law of trusts." *Donovan v. Mazzola*, 716 F.2d 1226, 1231 (9th Cir. 1983). Congress recognized that "the typical employee benefit plan, covering hundreds or

even thousands of participants, is quite different from the testamentary trust both in purpose and in nature," and noted that courts were to adapt traditional trust law while "bearing in mind the special nature and purposes of employee benefit plans intended to be effectuated by the Act," with the goal of equipping a participant with the legal tools "to safeguard either his own rights or the plan assets". S. REP. NO. 93-127, at 29 (1973), *reprinted in* I LEGISLATIVE HISTORY OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, at 615 (Comm. Print 1976) (hereinafter *LEG. HIST.*); H.R. REP. NO. 93-533, at 12 (1973), *reprinted in* 2 LEG. HIST. 2359; *see also Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996) ("ERISA's standards and procedural protections partly reflect a congressional determination that the common law of trusts did not offer completely satisfactory protection [to participants].").

Application of such trust law principles also favors giving precedence to the more participant-favorable plan document, based on the fact that the employer drafted both documents. *See, e.g., Lee v. Blue Cross/Blue Shield of Ala.*, 10 F.3d 1547 (11th Cir. 1994) (applying *contra proferentem*); *Massella v. Blue Cross & Blue Shield of Conn., Inc.*, 936 F.2d 98, 107 (2d Cir. 1991) (holding that application of *contra proferentem* to resolve ambiguities in an ERISA plan is consistent with the basic principle of trust law that trust property is to be dealt with for the benefit of the beneficiary, and citing Restatement (Second) of Trusts § 170(1) (1959)); *Kunin v. Benefit Trust Life Insurance Co.*, 910 F.2d 534, 540-41 (9th Cir. 1990) (*contra proferentem* is consistent with trust principles).

C. Alternatively, When An SPD And Another Plan Document Conflict, The SPD Should Control.

As discussed, the Court should adopt the bright-line rule that when plan documents are inconsistent, the more participant-favorable plan document should control. The Ninth Circuit's approach most closely comports with ERISA and applicable contract law and trust law principles.

Amici recognize that courts of appeals generally accord deference to the SPD when plan documents conflict. *Washington*, 497 F.3d at 457; *Burstein*, 334 F.3d at 378; *Helwig v. Kelsey-Hayes Co.*, 93 F.3d 243, 247 (6th Cir. 1996). Significantly, however, in these cases, the SPD was the more participant-favorable document; the courts had no occasion to address a more participant-favorable formal plan, and the courts' reasoning suggested that employers may not be able to take advantage of a more employer-favorable SPD. *Washington*, 497 F.3d at 457 ("Because the terms of the SPD and the Plan conflict, the terms of the SPD control and are binding on [the employer]"); *Burstein*, 334 F.3d at 378 n.18 ("'[I]f there is a conflict between the summary plan description and the terms of the policy, the summary plan description shall govern. Any other rule would be, as the Congress recognized, grossly unfair to employees and would undermine ERISA's requirement of an accurate and comprehensive summary.'" (citation omitted)); *Helwig*, 93 F.3d at 247 (favoring the SPD over conflicting plan because, *inter alia*, employees should be able to count on SPDs).

Courts that apply a bright-line rule in favor of SPDs rely on fairness to employees as a rationale. Addressing a company's argument that the court should enforce a disclaimer in the SPD proclaiming that "if a conflict arose between the plan and the [SPD], the plan should prevail," the Eleventh Circuit held: "Such an assertion defeats the purpose of the [SPD]. It is of no effect to publish and distribute [an SPD] designed to simplify and explain a voluminous and complex document, and then proclaim that any inconsistencies will be governed by the plan. Unfairness will flow to the employee . . . ." *McKnight v. S. Life & Health Ins. Co.*, 758 F.2d 1566, 1570 (11th Cir. 1985).

The Fifth Circuit also applies the rule that in the event of a conflict between the SPD and the terms of the policy, the SPD governs. *Hansen*, 940 F.2d at 981-82. That court explained that "[a]ny other rule would be, as the Congress recognized, grossly unfair to employees and would undermine ERISA's requirement of an accurate and comprehensive summary." *Id at 982.*; *see also Edwards v. State Farm Mut. Auto. Ins. Co.*, 851 F.2d 134, 137 (6th Cir. 1988) ("Congress has promulgated clear directives prohibiting misleading [SPDs].").

In giving precedence to the SPD, courts also cite employers' temptation to mislead participants:

> Allowing the plan's master documents to trump the SPD would both undermine Congress's intent for the SPD to convey accurately plan information to employees upon which they could rely, *see* 29 U.S.C. § 1022(a) (1), and would tempt plan sponsors to engage in drafting legerdemain in order to conceal or omit the less attractive

> aspects of their plan, thereby creating for ERISA a Daliesque world of legal surrealism.

Chiles v. Ceridian Corp., 95 F.3d 1505, 1518 (10th Cir. 1996).

In short, favoring the SPD tends to validate the more participant-favorable document, given that SPDs typically are provided to employees while other plan documents typically are not. The SPD "'will be an employee's primary source of information.'" *Burke*, 336 F.3d at 110 (quoting *Heidgerd v. Olin Corp.*, 906 F.2d 903, 907 (2d Cir. 1990)).

Further, employers obviously have a greater incentive to hide unfavorable provisions in plan documents that will likely never see the light of day, rather than in SPDs which by law must be given to participants. Moreover, because formal plans are "generally voluminous documents written in technical legal terms" (Br. for Pet'rs. at 3), it is easier to include unfavorable provisions in opaque provisions. Finally, even if a formal plan document includes language more favorable to the employee, it is far less likely that such terms will come to a participant's attention, given that most participants never see the formal plan. And should participants actually obtain the formal plan, they would still have to decipher its legal jargon.

For these reasons, while contract law principles in particular favor giving participants the benefit of the plan document that favors them, in most cases—and certainly in most cases that are ultimately litigated—this document will prove to be the SPD.

II. PARTICIPANTS SHOULD NOT BE OBLIGED TO ESTABLISH DETRIMENTAL RELIANCE, LIKELY HARM, OR ANYTHING BEYOND A CLEAR CONFLICT BETWEEN TWO PLAN DOCUMENTS.

Three Circuits—the Third, the Fifth, and the Sixth—have concluded that in the event of a conflict between a more participant-favorable SPD and a plan document, the SPD controls, with no requirement that the participant make any further showing in order to gain the benefit of the SPD. *Washington*, 497 F.3d at 457; *Burstein*, 334 F.3d at 382 ("[I]n enforcing an SPD's terms, a participant does not need to plead reliance or prejudice, since the claim for plan benefits under ERISA § 502(a)(1)(B) is contractual"); *Edwards*, 851 F.2d at 137 (same). This position is most consistent with ERISA, and this Court should adopt it.

Under ERISA section 502(a)(1)(B), a participant or beneficiary may bring a claim to enforce the "plan" as it is described in the "plan documents," which include the SPD. *See* Resps.' Br. at 21, 23-24, 28-29. In the same way that no showing of detrimental reliance is necessary to enforce the terms of the plan where there is no conflict in its terms, ERISA imposes no detrimental reliance requirement when the employer has caused the terms of the plan to be in conflict.

The position proposed by CIGNA is alien to ERISA. "Detrimental reliance" is not employed anywhere in the text of ERISA, or in the common law principles that it incorporates. Section 502(a)(1)(B) provides that a participant or beneficiary is empowered to bring a civil action "to recover benefits due to him under the terms of the plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."

Had Congress intended to add a conditional clause limiting section 502(a)(1)(B) to instances where detrimental reliance was demonstrated, it could have done so simply by adding the six straightforward words: "If he relied on such terms." But Congress did not explicitly or impliedly impose such a limitation. This is significant because this Court has often described ERISA as "a 'comprehensive and reticulated statute,' which Congress adopted after careful study of private retirement pension plans." *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 251 (1993) (quoting *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S. 359, 361 (1980)); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 511 (1981)).

It is noteworthy that Congress has enacted other statutory schemes that expressly do require a showing of reliance, such as section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78r. In contrast, section 1962(c) of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c), for example, includes no such mandate. This Court has declined to read such a requirement into that RICO provision, concluding that the fact that the statute provides a right of action to "[a]ny person" injured by the particular violation suggests "a breadth of coverage not easily reconciled with an implicit requirement that the plaintiff show reliance in addition to injury in his business or property." *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 649 (2008). The Court would not allow a reliance requirement to enter the statute "through the back door" of analogy to common-law fraud. *Id.* at 655.

CIGNA, like the petitioners in *Bridge*, would impose a reliance requirement "through the back door," here ERISA sections 502(a)(1)(B) and 502(a)(3).

These provisions, by their terms, include no reliance requirement.

A. Requiring Participants To Demonstrate Reliance Or Some Other Individualized Standard Precludes Uniform Plan Administration.

A requirement that participants demonstrate individualized reliance or satisfy some other individualized standard would be contrary to ERISA's broader goals of ensuring efficiency, predictability, and uniformity in plan administration. *See Conkright*, 130 S. Ct. at 1648-49 (noting that Congress sought to create a system that minimizes complexity and administrative costs, and that ERISA "induc[es] employers to offer benefits by assuring a *predictable* set of liabilities, under *uniform* standards of primary conduct and a *uniform* regime of ultimate remedial orders and awards when a violation has occurred." (emphasis added) (quoting *Rush Prudential,*, 563 U.S. at 379)).

To effectuate ERISA, employers, participants, and the lower courts need bright-line rules. *See Kennedy,* 129 S. Ct. at 876 (referencing "the bright-line requirement to follow plan documents in distributing benefits"); *Hicks v. Fleming Cos.*, 961 F.2d 537, 542 (5th Cir. 1992) (adopting a bright-line rule as to what constitutes an SPD because "'reasonable participant's or case-by-case tests—with their inevitable hair-splitting factual distinctions and litigation-encouraging ambiguities—would introduce considerable uncertainty into this area of law, to the ultimate detriment, no doubt, of all parties"); *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990) (clear rule "allows the parties to be certain of their rights and obligations").

The *ad hoc* procedure advocated by CIGNA would undermine both sides of ERISA's "'careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans.'" *Aetna*, 542 U.S. at 208 (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987)). Under CIGNA's approach, employers would be denied the benefit of simplicity and would be precluded from calculating their pension obligations in advance, as it would be unclear whether any participants could prove detrimental reliance. Employees likewise would be deprived of predictability and uniformity and would not have their promised pensions. None of these consequences were intended by Congress when it enacted ERISA.

B. A Detrimental Reliance Requirement Is Contrary To ERISA, Which Creates An *Objective* Standard.

Section 102 of ERISA provides that SPDs "shall be written in a manner calculated to be understood by the **average plan participant**, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." 29 U.S.C. § 1022(a) (emphasis added); *see also* 29 C.F.R. § 2520.102-3(1). ERISA thus creates an objective standard.

The Ninth Circuit addressed the objective character of the "average plan participant" standard in *Stahl v. Tony's Building Materials, Inc.*, 875 F.2d 1404, 1408 (9th Cir. 1989), speaking in terms of "the ordinary employee." *See also Wilson v. Sw. Bell Tel.*, 55 F.3d 399, 407 (8th Cir. 1995) (whether SPD is calculated to be understood by the "average plan

participant . . . appears to be an objective standard"); *McGee*, 953 F.2d at 1202.

Under the statute, the pertinent inquiry does not involve the understanding of a particular participant or what it would take to apprise that participant of his or her rights and obligations. Rather, the SPD must be drafted so as to be understood by the average plan participant, and the sufficiency of the document is gauged by reasonableness, not by a particular participant's subjective understanding.[5]

There is no place in ERISA's statutory scheme for the purely subjective and individualized inquiry urged by CIGNA. CIGNA argues that the burden of establishing detrimental reliance may be satisfied by a participant's testimony, and "they need only testify about the state of their *own* minds." Br. for Pet'rs. at 39 (emphasis in original). CIGNA cites nothing in ERISA that supports the position that right to recovery is based on a participant's state of mind. To the contrary, and as noted, section 102 speaks in terms of the "average plan participant," which leaves no room for an individual state of mind.

CIGNA similarly asserts that a participant cannot be injured by a deficient SPD "unless he consults the SPD in order to 'apprise' himself 'of [his] rights and obligations under the plan,' and the SPD causes the

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[5] Respondents identify several other statutes and regulations that use the "average plan participant" formulation, and point out that none of these schemes have been construed to require any showing of detrimental reliance. Resps.' Br. at 31-33 (discussing ERISA 29 U.S.C. § 204(h)(2); the Consolidated Omnibus Budget Reconciliation Act regulations at 29 C.F.R. § 2590.606-1(c); and the Older Worker Benefit Protection Act provisions at 29 U.S.C. § 626(f)(1) and 29 C.F.R. § 1625.22(b)).

participant to misapprehend his rights and obligations." Br. for Pet'rs. at 25. To support this assertion, CIGNA cites only section 102(a). *Id.* However, section 102(a) contemplates nothing of the sort. The provision does not state that *participants* must "consult the SPD." Indeed, it places no burden at all on participants. Rather the obligation is entirely on the SPD drafter, who must write it "in a manner calculated to be understood by the average plan participant." Further, the drafter must ensure that the SPD is "sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." 29 U.S.C. § 1022(a).

CIGNA goes on to attack the Second Circuit for supposedly turning section 102(a) on its head, by purportedly placing the onus of proof on CIGNA rather than on plaintiffs. Br. for Pet'rs. at 25. It is worth reviewing section 102(a) in its entirety on this point. It provides:

> A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 1024(b) of this title. The summary plan description shall include the information described in subsection (b) of this section, shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section shall be written in a manner calculated to be understood by

> the average plan participant and shall be furnished in accordance with section 1024(b) (1) of this title.

The provision which according to CIGNA creates burdens for participants and not for SPD drafters employs the verb "shall" six times, and includes no other verb that requires that action be taken. Each and every use of the term "shall" creates an obligation in the **employer-sponsor**. Four of the employer's obligations concern the SPD. Thus, the employer shall (1) furnish the SPD to participants as per ERISA section 104(b); (2) include in the SPD the information required in ERISA section 102(b); (3) write the SPD "in a manner calculated to be understood by the average plan participant"; and (4) ensure that the SPD is "sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." The final two obligations imposed by ERISA section 102(a) concern summaries of material modifications, and also apply an objective standard, *i.e.*, that any such summaries "shall be written in a manner calculated to be understood by the average plan participant."

C. A Detrimental Reliance Standard Is Contrary To Real-World Behavior.

CIGNA argues that each participant must prove that he or she detrimentally relied on a more favorable SPD in order to take advantage of it. Specifically, CIGNA submits, "[a] plaintiff can testify that she read the SPD, did not know of the contrary or omitted plan terms, and relied on the SPD to make a detrimental employment or retirement decision that she would not otherwise have made if she had known of the actual terms of the plan." Br. for Pet'rs. at 38-

39. CIGNA's reference to the so-called "actual terms of the plan" undermines the statutory scheme, which makes the SPD provisions every bit as enforceable as any other plan provision. In fact, ERISA requires that the SPD be "accurate." If CIGNA's detrimental reliance standard is adopted, every SPD provision may be contradicted by any other provision in any other plan document.

Further, under CIGNA's scheme, no participant can recover based on a favorable provision unless that provision was a deal-breaker for that participant. A district court has explained why this is so unreasonable:

> Plaintiffs cannot prove reliance because the SPD did not induce them to act or not act in a way that led to the forfeiture of the benefit they seek . . . Instead, Plaintiffs did what most (if not all) Plan participants would have done. They worked at Spacelabs knowing that they had a pension plan. They unlikely paid any attention to the provisions of the Plan governing partial termination. What employee anticipates the sale of his company and the partial termination of its pension plan? Even if employees had determined long before the Spacelabs sale that, based on the unambiguous SPD, they would become 100% vested in a partial termination, they could not have relied on that determination. At most they could have continued working at Spacelabs in the belief that they would vest fully.

Goldinger v. Datex-Ohmeda Cash Balance Plan, 701 F. Supp. 2d 1205 (W.D. Wash. 2010).

Requiring proof of actual reliance would undermine at least two of ERISA's fundamental goals: uniform

operation of plans under written documents, and protection of beneficiaries. Beneficiaries would frequently be unable to satisfy that burden—especially beneficiaries of deceased participants who are particularly unlikely to have evidence that the participants read the SPD and acted differently in response. *E.g.*, *Branch v. G. Bernd Co.*, 955 F.2d 1574, 1579-1580, n.2 (11th Cir. 1992).

D. A Detrimental Reliance Requirement Would, As A Practical Matter, Foreclose Relief Even For Those Few Participants Who Could Satisfy This Heavy Burden, Thus Violating the Policies Underlying ERISA.

Even if a few individual participants could overcome these hurdles and actually demonstrate reliance, it is highly unlikely that they would ever have the opportunity to do so. CIGNA argues that each and every participant here must offer his or her own individualized proof of reliance. Yet this case involves 27,000 participants who were promised certain benefits. Under CIGNA's approach, every participant who hoped to recover would be obliged to testify as to the precise details of his or her reading of the relevant plan terms and "reliance" thereon. Under these circumstances, it is highly unlikely that a class would ever be certified, since a court could conclude that "individual" issues predominate or that the claims lack "commonality." *See, e.g., Heffner v. Blue Cross & Blue Shield of Ala., Inc.*, 443 F.3d 1330, 1340-41 (11th Cir. 2006). Even if a case were ever accorded class treatment, the logistics of the requisite proof would likely overwhelm the trial court.

Given that class certification would be so difficult to obtain, should the Court adopt the standard urged by CIGNA, few class actions would be brought in these types of cases. Where does this leave those few participants who perhaps could establish detrimental reliance? Most likely, they would be unable to obtain counsel, because it is often not cost-effective to file individual pension lawsuits (especially considering the uncertainty of recovering statutory fees). *See*, e.g., *Simonia v. Glendale Nissan/Infiniti Disability Plan*, 608 F.3d 1118 (9th Cir. 2010).[6]

For these reasons, adopting CIGNA's position (and most likely precluding class treatment) not only runs counter to the remedial policies underlying ERISA, but is also inconsistent with policies underpinning Federal Rule of Civil Procedure 23. This Court has recognized that Rule 23 was enacted to minimize the likelihood that individuals would abandon their claims because they were not economically feasible. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 617 (1997) ("'The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.'" (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997)).

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[6] Should willing counsel be identified, in a case like this one involving many participants, thousands of lawsuits would be filed, clogging the courts with repetitive litigation involving the same issues. Even after all that litigation, few participants would actually obtain relief given the challenge of meeting CIGNA's exacting standard.

This Court has also observed that "the class-action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23." *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 155 (1982) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979)); *see also In re Workers' Compensation*, 130 F.R.D. 99, 110 (D.Minn. 1990) ("If the case were not handled as a class, thousands of small claims would be either brought or unjustly abandoned. The first possibility would be a flood of cases, the second would involve individual claims abandoned because of cost."). These considerations led this Court to observe that "[c]lass actions serve an important function in our system of civil justice." *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981). Other courts have made it clear that Rule 23 should be liberally construed: Even in a "doubtful case . . . any error, if there is to be one, should be committed in favor of allowing a class action." *Eisenberg v. Gagnon*, 766 F.2d 770, 785 (3d Cir. 1985).

Given these realities, adopting CIGNA's position would run counter to policies underlying ERISA. As this Court noted, "Congress enacted ERISA to 'protect . . . the interests of participants in employee benefit plans and their beneficiaries' by setting out substantive regulatory requirements for employee benefit plans and to 'provid[e] for appropriate remedies, sanctions, and ready access to the Federal courts.'" *Aetna*, 542 U.S. at 208 (quoting 29 U.S.C. § 1001(b)).

CONCLUSION

For the foregoing reasons, the National Employment Lawyers Association, Pension Rights Center, and United Policyholders urge the Court to affirm the Second Circuit's decision in favor of the Respondent plan participants. In so affirming, the Court should hold that when ERISA plan documents conflict, the more participant-friendly provisions control, and participants need make no further showing in order to recover on the basis of the favorable plan document.

Respectfully submitted,

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